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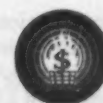
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THE SOLICITORS' JOURNAL



VOLUME 105
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CURRENT TOPICS

Damages for Fraud

WHERE a person has been induced to enter into a contract by the fraud of the other party, he may either affirm the contract or repudiate it. If he elects to affirm the contract, he may still bring an action for damages for deceit (see, e.g., *Dobell v. Stevens* (1825), 3 B. & C. 623) and, in a recent case at Birmingham Assizes, the plaintiff chose to follow this course. It seems that the plaintiff bought a house from the defendants, and he maintained that the defendants had concealed from him the fact that there was a cellar under the house and that water from a spring was flowing into it. Indeed, the plaintiff said that the defendants had told him that the house did not have a cellar, and he also gave evidence that, when he inspected the property, the entrance to the cellar was concealed by an asbestos partition, and a grating over the cellar, outside the house, was covered by a pot containing ferns. The defendants denied these allegations, and it is not surprising that FINNEMORE, J., concluded that the evidence of the parties was quite irreconcilable. In the event, his lordship did not feel satisfied that a case of deliberate fraud had been made out against the defendants and he gave judgment, with costs, in their favour. In the leading case of *Derry v. Peek* (1889), 14 App. Cas. 337, Lord Herschell said that "in order to sustain an action for deceit, there must be proof of fraud, and nothing short of that will suffice": in the case in question the plaintiff had failed to discharge this burden.

The Privy Council and Colonial Barristers

ONE of the residual matters in the jurisdiction of the Privy Council concerns complaints with reference to judges and barristers or legal practitioners in the colonies. A statute of George III gives the right to appeal to the Privy Council to a judge in a colony, the holder of judicial office by patent or for life, or for a certain time, who has been removed from office. Moreover, the legislative assembly of a colony may petition the Sovereign in Council for the removal of a judge. The Privy Council, too, may entertain appeals from barristers and legal practitioners who have been struck off the roll or suspended from practice in a colony for misconduct. The novel question was raised in a recent appeal whether the Judicial Committee could hear an appeal in such a case brought by the Attorney-General of a colony from a judgment of a colonial court of appeal which had set aside an order of a deputy judge to strike the name of a legal practitioner off the roll of the Supreme Court (*A.-G. of the Gambia v. P. S. N'Jie*, p. 421, *ante*). They considered first the preliminary question whether the Attorney-General of the colony was

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qualified to petition for special leave to appeal. By the terms of the Order in Council concerning appeals to the Privy Council from West Africa, the right of appeal is limited to a person "aggrieved" by the decision of the colonial court of appeal. They held that the Attorney-General of the colony, as the head of the Bar, came within that condition. It was essential to assure a high standard of conduct in the Bar of the colony. The deputy judge had found that the respondent had converted to his own purposes sums of money which he had received on behalf of others, and had been guilty of false representations and concealment. The Court of Appeal of West Africa had set aside the order to strike his name off the register. The main issue in the appeal was whether the order of the deputy judge, acting for the chief justice of the colony, was made in the execution of his judicial powers. He could not represent the chief justice in the exercise of administrative powers. The chief justice in a colony is vested with the powers which in England are exercised by the Benchers of an Inn of Court in regard to the admission or the misconduct of barristers; and in exercise of those powers he has the right to suspend a practitioner from practice, or to strike him off the roll. The power in the Gambia colony was prescribed in rules of the Supreme Court. When the West African Court of Appeal was set up, provision was made by statute for an appeal to the court from an order of a judge suspending a barrister or solicitor from practice, or striking his name off the roll; and such an order "shall be deemed to be an order of the Supreme Court." It was clear that the Legislature did not regard the decision of the judge as a judgment of the Supreme Court; and on this ground the court of appeal had held that it was not execution of the judicial powers, and therefore not within the competence of the deputy judge. The Judicial Committee, however, in allowing the appeal, held that the judicial powers of the judge were wide enough to cover a disciplinary power which had to be exercised judicially. The fact that there was a right of appeal by the practitioner to the Judicial Committee from an order of the kind indicated unmistakably that it was the exercise of a judicial power, since there was no right of appeal to the Council from the exercise of an administrative power. In several decisions the Privy Council had affirmed that the judge in a colony—or in India, at the time when appeals lay to the Privy Council from Indian courts—was under a duty to act judicially when trying a complaint of a lawyer's misconduct.

The "Headlight Code"

ALTHOUGH we do not expect that everyone will agree with us, it is our view that lorry drivers are amongst the most courteous and considerate drivers on the road. It is just this courtesy and consideration for other road users that has given rise to their unofficial code of headlight signals, but the use of these signals is not without difficulty. In a recent case at Watlington, Oxon, for example, a motorist said that, after overtaking a coach, he saw the defendant's lorry stationary in a side road. He sounded his horn and flashed his lights to warn him (the defendant) of his presence and the defendant, thinking that the flash of the headlights was an invitation to him to come on, pulled out in front of the approaching car. The magistrates refused to accept the evidence of the code and the defendant was convicted of dangerous driving contrary to s. 2 (1) of the Road Traffic Act, 1960. The chairman, VISCOUNT PARKER, said: "We can't help feeling that people would do better to stick to the Highway Code, not this unauthorised code." This is not

the first occasion on which the "headlight code" has been relied upon by a person accused of a motoring offence and it might be a contribution to road safety if an appendix or footnote mentioned it in the Highway Code. Alternatively, steps should be taken to prohibit its use. At present, the use of the "headlight code" gives rise to uncertainty and dangerous misunderstandings.

Mistake: Recovery of Money

As a general rule, where "money is paid to another under the influence of a mistake, that is, upon the supposition that a specific fact is true which would entitle the other to the money, but which fact is untrue, and the money would not have been paid if it had been known to the payer that the fact was untrue, an action will lie to recover it back" (per Parke, B., in *Kelly v. Solari* (1841), 9 M. & W. 54). There is authority for saying that this rule does not apply to money paid due to the erroneous construction of a written contract by one party to it, as such a mistake is a mistake not of fact but of law (see, e.g., *Ord v. Ord* [1923] 2 K.B. 432), but in *British Hydrocarbon Chemicals, Ltd. v. British Transport Commission* [1961] S.L.T., Notes of Recent Decisions, 34, the question arose as to whether money paid by mistake was recoverable where the mistake had been in the construction put, both by the payer and the payee, upon the terms of the contract entered into between them. LORD KILBRANDON answered this question in the affirmative and, in arriving at this conclusion, he applied "considerations of equity" rather than rules of either Scots or English law. His lordship found that there is "a source of natural justice, not especially characteristic of any particular system of law, which calls for repetition of a sum of money received by a person, albeit bona fide, in consequence of the innocent mistake of himself and of a payer who was not his debtor in that sum."

Trials in South Africa

THE Defence and Aid Fund organised by Christian Action to help those charged with political offences in South Africa still needs money. The fund was originally established to provide legal defence and sustenance for the accused in the treason trial and their families. The number of political trials in South Africa has increased, and at the end of the treason trial last month Christian Action had already sent over £85,000 to South Africa for defence and aid on that alone. The trustees of the Treason Trial Defence Fund in the Union subsequently stated that when the prisoners in the treason trial were acquitted some £8,000 in legal costs (i.e., two months' arrears) were still outstanding. This debt remains, and the fund is also committed to finding money for welfare and rehabilitation of these acquitted people. There are many other cases where help is needed, but the Defence and Aid Fund gives assistance other than legal aid and its target is based on the general needs of victims of apartheid in South Africa. The total target for this year is £200,000 (of which £15,000 has been raised). The specific requirements for legal costs for trials already held is £8,000, i.e., the treason trial alone, but it is more difficult to estimate costs for the other trials because cases in South Africa have a habit of being long-drawn-out affairs. It is believed that it will be necessary to spend something in the vicinity of £20,000 this year on legal costs alone. All lawyers who would like to do so are invited to send their contributions to Christian Action, 2 Amen Court, London, E.C.4.



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THE FINANCE BILL—I

THE Finance Bill, 1961, is a modest document of thirty-seven pages, and so rather less than half the size of the 1960 Bill, which ran to seventy-eight pages. While the main emphasis of last year's Bill was directed against tax avoidance along a broad front, this year the tax planners, whose operations in recent times have been the target of successive budgets, have been left in peace. The highlights of the new Bill are cl. 8, 11 and 26. Clause 11, in effect, increases the surtax limit for earned income to £5,000, but confers no benefit whatever on investment income. Consequently, a married man with one child under eleven years of age and an income of £5,000 a year, half earned and half unearned, will pay surtax of £342 10s., while a single man with the same income, all earned, will pay none. Indeed, cl. 27, which increases the rate of profits tax from 12½ per cent. to 15 per cent., could well reduce investment income unless the incentive given to company directors and executives by cl. 11 increases company earnings, as it is presumably expected to do. The Chancellor of the Exchequer has said, however, that he sees little difference between earned income and investment income, since the former is generally the source of the latter. There is a hint that the turn of investment income will come later, but if the cost of the relief in this case also is to be paid for by an increase in profits tax the resulting benefit will be in some jeopardy. As it is, profits tax has been increased by 50 per cent. in the last two years, and there has been little enthusiasm in any quarter for the latest increase.

Clauses 8 and 26 contain the new powers known as "economic regulators" which can be used by the Treasury to avert the threat of inflation. Used together they can syphon off £400m. of consumer purchasing power a year, but they are of limited duration unless renewed by Parliament. The advantage claimed for them is that they will be less disruptive in their effect on the national economy than sudden changes in bank rate or hire-purchase restrictions, and that their impact will not be largely confined, as with changes in hire-purchase restrictions, to the motor industry and the furniture and domestic appliances trades. Clause 8 empowers the Treasury to increase or decrease by not more than 10 per cent. either way the duties of customs and excise and purchase tax; while cl. 26 authorises the Treasury to impose on employers a "payroll tax." In each case the Treasury can make the necessary order if it is expedient to do so "with a view to regulating the balance between demand and resources in the United Kingdom," but the order must be subsequently approved by Parliament. Another innovation is "television advertisement duty," the cost of which will normally be borne by advertisers rather than by programme contractors. Most of the other provisions of the Bill are of relatively minor importance, although it has been contended that cl. 20 (which restricts the amount in respect of which capital allowances can be given for a motor car to a total of £2,000) can have serious effects on the manufacture and home sales of the highest priced cars.

Customs and excise

Clause 1 charges "television advertisement duty" on payments for advertisements inserted in television programmes broadcast from stations in Great Britain after 30th April, 1961. The duty amounts to one-tenth of the payment made or to be made for the insertion of the advertisement to the programme contractor and is to be charged

on and paid by him but, subject to any agreement to the contrary, is to be recoverable from the person making the payment. "Payment" includes any valuable consideration and also any commission or discount allowed to an advertising agent by the programme contractor. The new duty is subject to the provisions of cl. 8 of the Bill, which means that, as respects the period during which an order under that section is in force, it may be increased or reduced so as to become not more than 11 per cent. nor less than 9 per cent. The First Schedule to the Bill contains supplementary provisions as to the duty and provides, *inter alia*, that it is due on the making of the broadcast and payable by the programme contractor within fifteen days of the end of the month in which the broadcast is made, except that for the months ending before the passing of the Act the duty is to be payable with that for the month in which the Act is passed.

Clause 2 imposes, as from 17th April, 1961, a duty of 2d. a gallon on fuel oil, gas oil and kerosene, which have been duty-free since 1947, and increases from 1d. to 3d. a gallon the duty on other rebatable heavy oil, mainly lubricating oil. The duty will be charged on heavy oils delivered from bond and, in order to secure uniform treatment of stocks and maintain the revenue yield, provision is made for the duty to be charged on oils taken out of storage at unbonded premises with a capacity of 200,000 gallons or more. Penalties of £200 and upwards are provided for offences under the section.

Clause 3 amends the definition of pool betting so as to include the making of payments for the chance of winning money or money's worth where the payments are made on terms under which the payers have a power of selection which may (directly or indirectly) determine the winner, notwithstanding that the power is not exercised. The section is to have effect as regards payments whenever made where the winner is determined by reference to any event occurring after 28th April, 1961, but excludes certain lotteries contained in s. 6 (6) of the Finance (No. 2) Act, 1947, and s. 5 (2) of the Small Lotteries and Gaming Act, 1956. It nullifies a decision of the court to the effect that where the rules of a competition provide for a power of selection on the part of the entrant, but that power is not exercised by any of the entrants or is exercised by only a very few of them, the competition is not a pool liable to the pool betting duty but is to be regarded as a lottery. Small lotteries remain exempt from pool betting duty whether or not the rules or the practice provide for an element of selection.

Clause 4 is designed to protect the Revenue in the likely event of pool betting being legalised in the Isle of Man. It is the intention of the Tynwald to impose pool betting duty at the same rate as that which obtains in the United Kingdom, and the object of the section is to bring pool betting duties within the scope of what are called "common purse arrangements" with the Isle of Man, which provide for the sharing of the receipts of a number of customs and excise duties between the British and Manx Exchequers proportionately on the basis of residential population.

Clause 5 and Sched. II increase by about 20 per cent. as from 18th April, 1961, the licence duty on all motor vehicles chargeable with duty under ss. 2 to 6 of the Vehicles (Excise) Act, 1949 (except buses and coaches for which there were special reductions in 1959), and on trade licences taken out under s. 10 of that Act. The licence duty on private motor

cars accordingly goes up from £12 10s. to £15 per annum. Clause 6 amends the time limit for recovering under-payments and over-payments of vehicle excise duty.

The Finance Act, 1959, s. 13, relieves agricultural tractors and other engines from being charged to duty as goods vehicles when carrying agricultural loads on appliances of certain types fitted to the vehicle, but does not apply to three-wheeled vehicles for reasons of safety. Clause 7 of the new Bill provides, also for reasons of safety, that a vehicle having two wheels at the front less than 18 inches apart is to be treated as a three-wheeled vehicle.

Clause 8 empowers the Treasury, until 31st August, 1962, or such later date as Parliament may determine, to impose a surcharge or allow a rebate not exceeding 10 per cent. of the amount of duty or tax otherwise due, in respect of all duties of customs chargeable under any enactment other than the Import Duties Act, 1958, and the Customs Duties (Dumping and Subsidies) Act, 1957; all duties of excise, including bookmakers' licence duty under the Finance Act, 1948, s. 15, but excluding any other excise duty payable on a licence (such as vehicle excise duty and television licence duty); and purchase tax. Schedule III contains supplementary provisions as to orders under cl. 8 and Sched. IV provisions as to special cases falling within the clause. The powers conferred by the clause are to be exercisable by statutory instrument which must be approved by Parliament within twenty-eight days, excluding any time during which Parliament is dissolved or prorogued or during which the Commons is adjourned for more than four days. It is estimated that the new power will be able to stimulate or restrain consumers' purchasing power at the rate of over £200m. a year each way, so as to provide a total range of about £430m. in relation to total expenditure, mainly by private consumers, of about £7,500m.

Income tax

Clause 9 charges standard rate income tax of 7s. 9d. in the £ for the year of assessment 1961-62 and provides that the same surtax rates are to apply for 1961-62 as for 1960-61. Clause 10 then provides that the surtax rates for the year of assessment 1960-61 are to be the same as for 1959-60.

Clause 11 (1) deals with the changes in the level of earned income at which surtax commences for 1961-62 and subsequent years. First, the earned income relief of two-ninths of earnings up to £4,005 and of one-ninth of the next £5,940 of earnings at present allowed for income tax purposes is to be deducted from total (earned) income in computing income chargeable to surtax. The relief allowable is that due under the Income Tax Act, 1952, s. 211 (1) (as amended), including relief in respect of a married woman living with her husband, but excluding the allowance due under s. 210 (2) of the Act (commonly, but erroneously, known as "wife's earned income relief"). Secondly, there is to be a further deduction of an "earnings allowance" amounting to £2,000 or such smaller amount as will reduce the earned income (after deducting

the earned income relief) to £2,000, unless this is already less than £2,000. Accordingly (ignoring any relief for National Insurance), a single person having an earned income of £5,000 will, as from 1st January, 1963, have a nil liability to surtax. He will be entitled to earned income relief of $£4,000 \times 2/9\text{ths} = £890$, plus $£995 \times 1/9\text{th} = £110$, making total earned income relief of £1,000. The earnings allowance of £2,000 will reduce the balance of £4,000 to £2,000, on which no surtax is payable.

No alteration is made in the treatment for surtax of investment income. A married man with one child, aged between eleven and sixteen years, and having an income of £6,000 a year, half earned and half unearned, will pay surtax of £461 17s. 6d. Earned income relief will be $£3,000 \times 2/9\text{ths} = £666$ 10s., which will reduce earned income to £2,333 10s., on which the earnings allowance will be £333 10s. Earned income relief and earnings allowance combined reduce total income to £5,000. The limit for surtax will be £2,000, plus marriage allowance of £100 and child allowance of £125, so that the surtaxable income will be £2,775, which bears surtax of £461 17s. 6d.

Sub-clause (2) provides, in effect, that where the claim for the reliefs under sub-cl. (1) is made by an individual who is not resident in the United Kingdom, but is entitled to claim a proportion of personal reliefs by reason of s. 227 of the Act of 1952, the new reliefs are to be given in the same proportion. Sub-clause (3) applies where, for any year of assessment, a husband and wife are separately assessed to tax by virtue of an application made under s. 355 or s. 356 of the 1952 Act. Whether or not they are separately assessed to surtax, the reliefs resulting from sub-cl. (1) are to be the same as if there were no separate assessment. If they are separately assessed to surtax, each spouse will be entitled to a proportion of the new reliefs corresponding to his or her share of their total earned income, but any relief which cannot be effectively allowed to the one will be allowed to the other. The other personal reliefs due for surtax under the Finance Act, 1957, s. 14, are to be apportioned between them in accordance with their proportions of income remaining after the deduction of the reliefs above referred to.

Clause 12 increases the income limits for dependent relative relief from £135 and £210 to £155 and £230, respectively. For 1961-62 the full relief of £75 which is given to an individual who maintains a dependent relative will be given if the income of the dependant does not exceed £155 but, since the relief is reduced by £1 for every £1 by which the dependant's income exceeds £155, no relief will be available where the annual income of the dependent relative is £230 or more.

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(To be continued) K. B. EDWARDS.

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THE FIXED PENALTY GAME

ENFORCEMENT of parking restrictions by means of the fixed penalty ticket, pursuant to ss. 1 and 2 of the Road Traffic and Roads Improvement Act, 1960, has now been operating in central London for some eight months. During that period, as calculations based on official figures reveal, between 70,000 and 100,000 penalty tickets have been issued. One hundred and thirty traffic wardens are now employed and the weekly rate of tickets is said to be about 1,000, of which one third are unpaid within twenty-one days. At the beginning of the scheme last September fifty wardens were issuing tickets at the rate of five to seven per day. At that rate, as the Government spokesman pointed out in the House of Lords' debate last November, there would be a monthly rate of 9,700 tickets issued. Since then the number of wardens has more than doubled and the area of operation has extended until it now covers most of the boroughs of St. Marylebone, Holborn, St. Pancras and Westminster. The estimate of only 1,000 tickets issued each week is therefore a conservative one, as also is the degree of compliance.

Court cases

Precise figures of enforcement by prosecution are not obtainable. The number of cases which reach the courts can, however, be ascertained. Up to seventy-five cases arising from non-payment on a warden's ticket are heard on four days a week at both Bow Street and Marlborough Street Magistrates' Courts and each month there may be one special list of 400 cases to deal with arrears. An estimate of the total number of cases heard since November last is 8,000. Only a proportion can be dealt with since it seems that regularly up to one-quarter of summonses are not acknowledged and so are "not served." One-fifth of those which have not been acknowledged or where pleas of guilty are not sent require to be withdrawn, the traffic warden having resigned.

So from a potential number of some 25,000 prosecutions there appear to have been court proceedings in only 8,000 to date. Of the balance some 1,000 a week are in the prosecution pipeline, with fresh prosecutions running at another 500, including prosecutions for unpaid excess meter charges. This still leaves a balance of about 15,000 tickets with a face value of £30,000 unaccounted for. The explanation is simply that, for various reasons, payment was not enforced.

Results of proceedings

As for results of court proceedings, the Automobile Association figures for members represented at court show that twenty-seven cases out of the 160 their solicitors have dealt with obtained an absolute discharge and a further six were dismissed outright. Of 102 members dealt with by a fine, fifty-five were fined 20s. Fines exceeding the fixed penalty were imposed in eight cases. The average fine works out

at 25s. Defendants who do not appear or are not represented no doubt receive heavier penalties. On 18th April last at Bow Street the chief metropolitan magistrate imposed uniform fines from £3 to £5, a significant departure from the standard fines by other magistrates, but he awarded an absolute discharge in nearly 10 per cent. of the total cases dealt with.

Conclusion

What emerges from these figures? A lawyer's first reaction would perhaps be of surprise at the number of cases which can apparently be dismissed outright. The offence, after all, involves "absolute liability." But there may be a defence on the facts—a mistake having been made by the warden as to the time of the alleged offence. When court hearings do not take place until four or five months after the incident it is understandable for memories, not reinforced by a notebook, to be at fault. Or the wrong defendant may have been summoned. Another defence available is that there was a breakdown or that the waiting was with a police officer's permission.

The number of cases where an absolute discharge is granted is more remarkable. This suggests that 10 per cent. of offences may be excusable and that, had the explanation been available in the first place, no action need have been taken. A fine of 20s. denotes a certain sympathy. Altogether the results appear to indicate that 40s. is an excessive penalty in a high proportion of cases. But results are not publicised, so that any undue leniency on the part of the courts cannot account for the degree of non-compliance with the ticket.

The lawyer would no doubt wash his hands of the whole matter. The Act encourages the offender to exercise his right to a hearing by ensuring, in s. 1 (10), that he is not penalised for doing so. The Metropolitan Police are not unhappy about the position. The Commissioner has reported to the Minister that the traffic warden fixed penalty system has been "an unqualified success." The police process office is quite content to handle the present number of prosecutions. The inspector on duty at Bow Street on 18th April, when 427 cases were listed, managed to present 190 cases in 100 minutes, thereby living up to his name of Sparks. The real fear indeed is that the machinery of the law, and the "fixed penalty" system in particular, is liable to fall into a certain degree of contempt. A thousand prosecutions a week may not appal the Metropolitan Police but it represents a burden on the courts which is the very reverse of the intention of the Act. The Act, in the words of the preamble, was designed to "facilitate the enforcement and administration of the law." To this extent it has failed. What seems equally serious is that the law is brought into disrepute by the very facility with which the consequences of breaking it can be avoided. The whole affair of the warden's ticket has become a game.

C. D. B.

RESEARCH SURVEY OF COMMON LAND

A systematic research inquiry lasting three years into the management problems of commons is being promoted and financed by the Nuffield Foundation. The work will be undertaken by a research team consisting of Professor Alun Roberts, just retired from the Chair of Agricultural Botany at the University College of North Wales, Mr. Hubert J. F. Smith, who retired at the end of 1960 as Chief Agent of the National Trust,

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County Court Letter

POP GOES THE TELLY

EARNEST students of sociology, if any, who in their off-moments glance at County Court Letters will doubtless have noticed the almost indecent frequency with which hire purchase comes into the picture. This is of course partly because of the special jurisdiction given to the county court over hire-purchase actions, and partly because the subject is a vexed and vexatious one to sociologists, economists, welfare workers, probation officers and, last but not least, the courts themselves and all those who practise in them. If memory serves, the national H.P. debt is now of the order of nine hundred million pounds, a fact over which economists must be shaking greying heads. This in turn must mean that a very high proportion of the population is buying something on hire purchase. The sociologists may know the actual figure, but it must surely be more than 60 per cent. Welfare workers will undoubtedly know the fantastically high proportion of the weekly pay packet many families spend in hire-purchase payments—one-third is by no means uncommon. They will also know the number of families who get into difficulties in consequence. So will probation officers, who also know so well that, since it is inevitably people in the so-called lower income groups who buy things on hire-purchase and get into a muddle over paying for them, there is often a great temptation to sell them before they have been paid for. Finally, though hire-purchase cases are only about 3½ per cent. of all cases dealt with by the county court, they are frequently the most difficult to decide, as all who have dealings with the courts can testify.

The reader of retentive memory will remember that it is by s. 12 (1) of the Hire-Purchase Act, 1938, that the county courts are given jurisdiction in respect of actions for recovery of goods let on hire purchase where one-third of the hire-purchase price has been paid and the total price does not exceed £300, or in the case of livestock £1,000 (Hire Purchase Act, 1954, s. 1 (1)). This obviously brings the vast majority of such transactions within the Act. In such cases, possession cannot be legally obtained without action (s. 11 of the 1938 Act), and s. 12 (4) (b) gives the court power to make an order for specific delivery of the goods in question, and to postpone its operation while payments are being made at such rate as it thinks just.

All present and correct

Section 12 (5) states that this order shall not be made unless the hirer satisfies the court that the goods are in his possession. The sole exception to this is where an offer as to terms of postponement is made by the defendant and accepted by the plaintiff (1954 Act, s. 2 (3)).

These apparently simple, and indeed beneficial, provisions give rise in practice to a number of thorny snags. In the first place, in many cases repossession of the goods is about the last thing that the owner-finance company wants. It wants its money, not a lot of dejected-looking second-hand bits and pieces. Yet if the defendant does not turn up at the hearing, on the face of it the court ought to make an order under s. 12 (4) (a) for specific delivery of the goods only. Originally, such an order did not even give the defendant the right to pay their value and retain them, but s. 2 (2) of the 1954 Act altered all that.

Furthermore, it sometimes happens that, when the bailiff goes to execute a warrant for possession, he discovers that the hirer has flogged the goods in order to provide himself with

a little beer money. The plaintiff is then left with an order for specific delivery with which there is nothing that he can do, whatever his so-called friends may say.

It is no secret that some courts, by design or inadvertence, conveniently ignore s. 12 (5) and make orders for specific delivery suspended on payment of some monthly sum in all cases which come within the provisions of that section. If the goods are found to have disappeared, there is then a judgment that at any rate mentions money. It can be argued that, since the court has the power to vary the terms of any postponement (s. 13 (4)), it could vary it to a suspended order, postponed only on payment of the whole balance due. The snag about this, of course, is that the order remains one for specific delivery, and failure to comply with the terms of postponement still only entitles the plaintiff to seize the goods, even if they are actually there to seize.

Passive persuasion

Faced with this problem, plaintiffs have been known to ask the court to vary its order to a money judgment, and it is whispered that this has on occasion been done. Strictly speaking, however, it would seem that, though the court has power to vary the mode of payment in respect of any money judgment, it has no power to alter the fundamental nature of an order.

What, then, is the plaintiff to do? It seems to be anyone's guess. Apart from trying his powers of persuasion on the registrar on the lines suggested above, the plaintiff might make an application to the court under s. 13 (2). Unfortunately, although the section says that in such a case no plaintiff shall endeavour to enforce a civil right except by making such an application, it does not appear exactly what form it should take. Should it be for damages for breach of covenant not to part with the goods which the hire-purchase agreement will certainly contain, or perhaps for leave to start such an action? The plaintiff has little to guide him. He can, however, at least levy execution in respect of his costs, as to which an order to pay exists.

Way out

It will be seen from the foregoing that ss. 12 and 13 of the 1938 Act raise a lot of niggling little problems. For that reason, if no other, some courts decline to make s. 12 (4) (b) orders, but make straightforward detain orders for return or value, suspending them under the general powers contained in the County Courts Act, 1959, s. 99, on such terms as may be just. As this type of order is one for alternative remedies, if the goods are not returned and default is made in payment of any instalment, the value, usually the balance of the hire-purchase price, becomes payable, and execution can be levied in respect of that sum. One knows not whether this simple expedient would upset the sociologists, economists, welfare workers and probation officers, but it is certainly of benefit to the courts and all who practise in them.

J. K. H.

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THE POWER THAT NEVER WAS

IN an article entitled "The Power that Vanished" (p. 397, *ante*), T. M. A., dealing with that part of the Charities Act, 1960, which repealed the law of mortmain, comes to a somewhat startling and provoking conclusion. It seems that the repeal by the 1960 Act of s. 14 of the Companies Act, 1948, might have had the effect of taking away the power of a company to hold land, unless, of course, as is usually the case, an express or implied power exists in its memorandum. This is not only a startling and unforeseen effect of the 1960 Act, but, if the author's view is correct, one which opens up yet another of those slippery paths that run through the cases involving the *ultra vires* doctrine. Illustrations are indeed given of difficulties that might have been caused if this is the effect of the 1960 Act. There is certainly argument enough already for revision of the *ultra vires* rule, and perhaps it may be taken that recommendations will this time be made and adopted so that the rule itself can be left as a harmless and faintly nostalgic memory for academicians.

It is the purpose of this article, however, to assume that no such recommendations will be made or adopted, or none such as would resolve the doubt raised regarding a company's power to hold land, and to consider how the court might try to mitigate the harshness of the *ultra vires* doctrine if this were pleaded. It may be that the conclusion which can be arrived at is that, whatever the Charities Act, 1960, may have done to s. 14 of the Companies Act, 1948, a company's powers in this respect and their effects on outsiders are no different from what they were before.

Objects and powers distinguished

First, let it be stated that we are not dealing with cases where there is an express power to hold land in the company's memorandum. The author limited his remarks to implied powers, if any. However, let it also be said that there are some who believe that even an express power ought properly to be regarded as ancillary to whatever the main object of the company may be and, despite cases like *Cotman v. Brougham* [1918] A.C. 514, are prepared to say that a distinction still exists between *objects*, for which a company exists, and the *powers* which it has to achieve these objects. Some think, indeed, that, even with the customary "independent main objects clause," if you are considering a power and whether it is properly exercisable, you must see that its exercise is for the true main purposes or objects stated.

It seems to be admitted that the power to hold land is or may be a separate matter from what may in a given case be the main objects of the company. Indeed it is precisely this situation that is under discussion. Power of a company to hold land, says the author, now depends on the general company law. Is this much of a new situation? It may be that too much stress can be placed on the Companies Act side of it. True it would seem that s. 14 can be said to have done two things: (i) conferred a power to hold land, and (ii) dispensed with the requirement of a licence in mortmain if the land is in the United Kingdom. The section certainly did no more than this and it is perhaps misleading to say

that it substituted power to hold land for one of the objects of incorporation. If s. 14 has indeed been wholly repealed with the unforeseen effect talked about, does this necessarily mean that a company has no other general power to hold land? It is, after all, not unusual for a person to have both a common-law and statutory power relating to the same matter, for example the common-law and statutory powers of leasing of a mortgagor in possession.

Continuation of common-law power

If it is admitted that where you were placing reliance on the statutory power you were not at the same time placing reliance on an express power in the memorandum, and if it is also admitted that the statutory power of itself could not in these circumstances amount to the main object of the company, since that has to be expressly set out, the conclusion seems obvious. Section 14 did not confer an object, *a fortiori* a main object; it conferred a power, and powers must be construed as incidental to objects, especially when they are powers not expressly set out in the memorandum. This is exactly the same situation dealt with in the previous article where the author assumed that the power of a company to hold land existing under the general company law was confined to cases where land holding was fair and incidental to the objects of the company—"one can conceive that it would be prudent to inquire, for instance, how it was contended that the ownership of a slag heap was 'fairly incidental' to the business of a wholesale fishmonger." On this basis, therefore, even assuming that s. 14 is wholly repealed, there must still exist a power to hold land at common law provided that the transaction is for the objects for which the company was formed (*Sutton Hospital* case (1612), 10 Rep. 23a; and see Halsbury's Laws of England, vol. 6, p. 455; vol. 9, p. 73, and, for an example, Palmer's Company Law, 20th ed., p. 80). This must be so and a corporation must have power at common law to hold land as an ordinary individual, otherwise the Mortmain Acts would have been unnecessary. Again this is impliedly admitted in those cases where reliance has to be placed on a transaction which is fair and incidental to the purposes of the company. The conclusion must therefore be that, if s. 14 has been wholly repealed, then the statutory power of a company to hold land has been lost, but the common-law power continues. Both these powers, however, are and always have been mere powers and not objects, so that in cases where land holding is not part of the main objects of the company an outsider dealing with it is as happily off now as he ever was. *Plus ça change plus, c'est la même chose.*

T. W.

* * * * *

T.M.A. writes: The interpretation of s. 14 as granting a power exercisable only in certain circumstances appears to be at variance with the clear words of the statute. It is believed that the section was cited by all the leading textbooks as authority for the proposition that profit-making companies had, without qualification, a power to hold land. This view is respectfully thought to be correct.

Wills and Bequests

Mr. WILFRED HAROLD HUMPHRIES LANGLEY-SMITH, solicitor, of Gloucester, left £29,273 net.

Mr. JOSEPH MORRIS SHAW, solicitor, of Leek, left £41,169 net.

Landlord and Tenant Notebook

MINUS VALUE OF REVERSION

In *Lloyds Bank, Ltd. v. Lake* [1961] 2 All E.R. 30, an action for dilapidations, the learned Senior Official Referee decided a number of points arising out of the grant of an underlease of a cottage, both the underlease and the mesne lease having determined with the death of the mesne lessee.

The deceased had held a lease commencing 25th March, 1942, and running for twenty-one years if she should so long live. She undertook internal repairs and upkeep of the garden; the lessor covenanted to keep roof and outer walls and drains in repair. In 1946 she underlet the cottage to two tenants, the instrument being called a lease and she the lessor, for fourteen years from 25th November of that year, with a proviso that on her death the term should forthwith cease and be absolutely determined. The "lease" obliged the grantees, who did not know the grantor was a lessee, to do all repairs.

The mesne lessee died on 6th August, 1957, and the executors of her landlord served her executors with a notice determining the lease on 25th December, the recipients serving a similar notice on the surviving under-tenant. It is not clear why these notices were served at all if the description of the habendum in the head lease and of the proviso in the underlease are accurate.

Schedules of dilapidations followed. The superior landlords made a claim against the mesne lessee's executors which was settled for £715, and they in turn made a claim against the surviving underlessee which was referred to the Official Referee. It comprised five items: the £715 paid to the superior lessor's executors; a sum of £42 10s. surveyor's fees which they had paid in connection with the settlement; a sum of £73 10s. fees paid to the surveyor for preparing the claim; and items of £70 10s. and £32 10s. solicitors' costs incurred in settling the head lessors' claim and preparing the claim against the underlessee respectively.

"Momentary and notional"

In answer to the main claim, the defence put forward what the learned referee called careful arguments, the reasoning of which was ingenious and almost attractive; but he had no doubt that it was all wrong. Compare Atkin, L.J.'s description of the notice to quit in *P. Phipps & Co. v. Rogers* [1925] 1 K.B. 14: "Short, simple and wrong."

Thus it was urged that, as the plaintiffs' reversionary interest at the expiry of the defendant's (under)lease had been momentary and notional, they having at the same time yielded up their interest to the head lessors, its saleable value was nil, and this whether the premises were in repair or not.

Rejecting this argument, which did not accord with logic, the learned referee referred to two authorities. There was *Jaquin v. Holland* [1960] 1 W.L.R. 263 (C.A.) (a decision which has been subjected to some criticism as partly undoing the work done by the Landlord and Tenant Act, 1927, s. 18 (1), and in which a landlord recovered damages representing the cost of repairs though he had immediately re-let at a higher figure after spending less than that amount): in the course of his judgment, Devlin, L.J., said: "There must always be a notional moment of time, even if one lease immediately succeeds the other, in which the estate finds its way back into the hands of the landlord, and the value of the reversion is, therefore, the value of the freehold as it has come back

into the hands of the landlord before he lets it out again." The learned lord justice was dealing with an argument based on the subsection mentioned above, and interpreting the term "reversion" used in that enactment; one might criticise the statement "the estate finds its way back into the hands of the landlord," but the passage does emphasise the existence of a reversion.

Espir v. Basil Street Hotel, Ltd. [1936] 3 All E.R. 91 (C.A.), was strongly relied upon by the defence. This was a case in which a mesne tenant holding under a ninety-eight years' lease of part of a building sued a sub-tenant of that part for breaches of covenants against alterations. The sub-tenant had, however, been granted a 999 years' lease by the freeholder, and it was held that there had, in these circumstances, been no diminution in the value of the plaintiff's reversion. The defendant had acquired the superior landlord's reversion to the mesne lease.

But in the case before the court the reversion had a minus value—this because the plaintiffs would have had to pay an assignee of the fag-end of the lease, or of its last moment, the cost of the necessary repairs.

Notice

The question whether the defendant had been aware of the existence of the mesne lease assumed importance when that of his liability for fees and costs came to be considered. *Ebbetts v. Conquest* [1895] 2 Ch. 377 (C.A.), is the authority for the proposition that when a mesne lessor sues his tenant for breaches of repairing covenants during the term—in that case some four years before it was to expire, and some seven years before the head term was to expire—the fact that the plaintiff was bound by similar covenants in the head lease must, provided that the defendant had notice of the existence of a superior landlord, be taken into account. As regards the actual disrepair complained of in *Lloyds Bank, Ltd. v. Lake*, the point was academic, the referee finding that whether the defendant had had notice or not damages came to the same £715, the cost of the repairs. He did, however, consider that the defendant had not had notice, the circumstance that the underlease was to terminate on the death of the mesne lessee not being sufficient to suggest that she had held under a lease. A landlord might stipulate for such a proviso in order to facilitate disposal of his estate on his decease.

Costs and fees

The claim included, as has been mentioned, items consisting of solicitors' costs and surveyor's fees incurred in settling the head lessors' claim, and items consisting of such costs and fees incurred in the action against the underlessee.

The former were dismissed on the wide (*Hadley v. Baxendale* (1854), 9 Ex. 941) ground that the loss did not flow from the breach. But undue prominence appears to be given, in the headnote at all events, to the effect of the absence of notice. The true *ratio decidendi* of the judgment is to be found in the sentence: "It would be otherwise if there were notice of the head lease and a covenant by the sub-lessee to indemnify the lessor against the head landlord's claims (see *Clare v. Dobson* [1911] 1 K.B. 35)." The report of the authority named, and to the references made by Coleridge, L.C.J., to *Hadley v. Baxendale* and to *Ebbetts v. Conquest* [1895] 2 Ch. 377, show

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A Welsh Coxswain

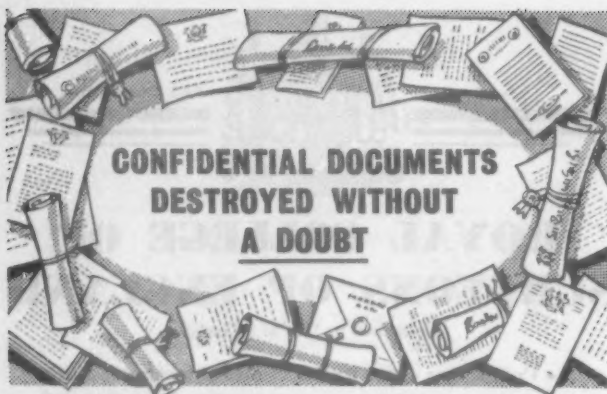
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that notice without a covenant for indemnity would not make an under-lessee liable.

The plaintiffs' costs before action and the surveyor's fees for preparing the schedule were likewise held irrecoverable in

the absence of any specific provision in the underlease, *Maud v. Sandars; Cherry, third party* (1943), 60 T.L.R. 81, being followed.

R. B.

HERE AND THERE

"PROTEST TOO MUCH"

A COUPLE of weeks ago I ventured to suggest that rather too many people allow their language, and sometimes even their thought, to be enslaved by the accidental word-combinations of mere mechanical quotation or maybe misquotation, often quotations which are metaphors, but which they have forgotten are metaphors, images or pictures, which only make sense in their proper context, but which are torn out of their context to plug any old hole in a faulty argument. Poor Shakespeare is a constant victim of that sort of misappropriation. It was, for example, in a most unfortunate moment that he penned the phrase: "The lady doth protest too much, methinks." This (with the "methinks" generally transposed to the start of the sentence) is regularly used to buttress the notion that indignant repudiation of a derogatory suggestion is, somehow or other, in itself a suspicious circumstance which confirms the truth of the charge. The implication is that under a false accusation an innocent person will always sit icily calm, contemptuous and confident that truth will prevail, indifferent to the insult and utterly urbane. No doubt there are in the world people capable of this sort of superhuman self-control, but a misplaced quotation from a seventeenth century play has nothing to do with the case. Anyhow, which play was it? "Hamlet." Right. And which lady in "Hamlet" had protested too much? Not the guilty Gertrude, but the Player Queen. And what was she protesting about? She was not protesting about anything; she was rather over-emphatically protesting her love of her husband—a very different matter. Shakespeare seems to have preferred women capable of understatement in their affections—Cordelia, for instance, or Viola. As for protesting against a false accusation, Desdemona rightly protested like anything against the slanders of Iago and there was never any suggestion that she was overdoing it. Human temperaments are infinitely various but, as a general rule, I should have thought that the greater the innocence the greater the indignation. Yet I have heard the stale old quotation dragged in to back up the suggestion, for instance, that the anger displayed by the man accused by the police in the "Kiss in the car" case was tantamount to an admission of guilt. In that case, anyhow, the argument was distinctly double-edged, since the lady concerned had remained calm.

HUNTING WITCHES

ANOTHER word-combination that has done remarkable service in vitiating thought is "witch-hunt." In some political quarters any attempt to detect and root out secret subversive

activities or espionage on behalf of a foreign power has long been a "witch-hunt" and therefore superstitious, obscurantist and utterly ridiculous and retrograde. But on what does the *sens péjoratif* of the expression "witch-hunt" rest? On the suggestion that there never really were any such beings as witches. But if witches, with all their secret malevolent powers, did exist the most eminently sensible thing in the world would be to hunt them and the only possible controversy would be as to the best and most effective means of distinguishing between a diabolical agent and a harmless eccentric. The case of Blake (alias Behar) has raised a great howl of criticism against the Government for laxity in security, but, if really effective means to forestall him and his kind had been taken before the current revelations, a louder and far more prolonged howl of "witch-hunt" would undoubtedly have been raised in calculated protest.

THAT SACRED CLOCK

THEN there is that ever resilient old imposter: "You can't put the clock back," a palpable fallacy because you can and do put your clock or your watch back (and rightly) every time it runs fast. You also put it backwards or forwards every year to accord with the convenience of the season. This particular word-combination has many misuses but it is generally called up to counter the suggestion of using more violent methods in repressing more violent criminals, a practical problem quite difficult, doubtful and complex enough without the introduction of a misleading metaphor. No normal civilised human being likes the idea of beating a fellow creature into submission or hanging him or boiling him in oil as a last resort; yet personal distaste or daintiness can never be a valid objection to doing an unpleasant but necessary thing (assuming it really is necessary) like going to the dentist or changing a baby's nappy. For sensible people the only question is whether in the existing circumstances (and circumstances change all the time and not always in one direction) the thing is necessary and effective. What is necessary and effective here to-day has no relevance at all to the necessary and effective thing yesterday or tomorrow or somewhere else. It is some thousands of years since man hunted large wild animals in Middlesex, but if some lunatic or cataclysm were suddenly to open all the cages at the Zoo, big game hunting would return to Regent's Park in a matter of minutes and I doubt very much whether even the most ardent opponent of blood-sports would invoke the impossibility of "putting the clock back." It would be back already.

RICHARD ROE.

INTERNATIONAL CARRIAGE BY AIR

The Carriage by Air (Parties to Convention) Order, 1961 (S.I. 1961 No. 834) certifies under the Carriage by Air Act, 1932, s. 1 (2), who are High Contracting Parties to the Warsaw Convention signed in 1929 for the unification of certain rules relating

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NOTES OF CASES

*These notes are published by arrangement with the Council of Law Reporting. Except in respect of those marked *, full reports of the judgments, revised by the judges, will shortly appear in the Weekly Law Reports. A list of cases reported in today's issue of "W.L.R." is set out at the end of these notes.*

Case Editor: J. D. PENNINGTON, Esq., Barrister-at-Law

Judicial Committee of the Privy Council

ADMINISTRATION OF ESTATES: CREDITOR'S
RIGHT AGAINST DEVISEE

Salih and Others v. Atchi and Another

Lord Radcliffe, Lord Denning, Lord Hodson, Lord Guest and
Mr. L. M. D. de Silva. 8th May, 1961

Appeal from the Supreme Court of Ceylon.

A testator, who died in 1931, specifically devised the land the subject-matter of the present action to his son, who was also appointed executor. The son, in the course of the administration, had mortgaged certain property (not the subject-matter of this action) in favour of a creditor, whose executor was the first respondent, to secure a loan. The testator's son died in 1940, before completing the administration, and in 1938 he had conveyed the disputed land to himself—executor to devisee—and thereupon had transferred it by way of gift to his son. In 1943 the first respondent obtained the appointment under s. 520 of the Ceylon Civil Procedure Code of the Secretary of the District Court, Colombo, as administrator *de bonis non* of the estate of the testator, and letters of administration were issued to him. On his retirement from office without completing administration his successor was appointed administrator, and, in turn, on his retirement his successor in July, 1949, was directed to be substituted, but no letters of administration were issued to him. In November, 1949, the first respondent sought to enforce the mortgage, naming the "Secretary of the District Court, Colombo," as defendant. On proof by the first respondent of the mortgage debt, the secretary administrator not having appeared, a decree was made in 1951 that the secretary should pay to the first respondent the amount due on the mortgage, with interest. Execution was then levied on the property of the secretary as administrator to satisfy the decree debt, and it resulted in the seizure of the disputed land, which was then in the possession of the appellants, having been transferred to them by their mother, who had received it as a provision made on her marriage by her brother, the son of the testator's son. The appellants having obtained a court order for release of the property seized, the first respondent began the present proceedings, which resulted in an order of the Supreme Court of Ceylon of 4th December, 1957, that he was entitled to execute the decree of 1951 against the appellants' property. The appellants appealed.

LORD RATCLIFFE, giving the judgment, said, first, that the Civil Procedure Code created the holder of the office of Secretary of the District Court a corporation sole for the discharge of his functions *qua* administrator, and therefore notwithstanding the changes in the holder of the office there was a proper defendant before the court in the mortgage proceedings and the last holder of the office did not require a grant of letters of administration: *Samarasekera v. Secretary, District Court* (1949), 51 N.L.R. 90. Secondly, the right of an unsatisfied creditor to follow assets of the estate into the hands of devisees or legatees and those claiming through them for the purpose of obtaining payment was fundamentally an equitable right which might be defeated by, *inter alia*, a transfer from the devisee to someone who took in consideration of marriage: see *Dilkes v. Broadmead* (1860), 2 Giff. 113, and *Spackman v. Timbrell* (1837), 8 Sim. 253. Since, therefore, the appellants derived title to the disputed property through their mother and she took it from her brother in consideration of

marriage, it was not liable to be seized to satisfy the first respondent's decree. Appeal allowed.

APPEARANCES: *Walter Jayawardena* and *Dick Taverne* (*Charles Russell & Co.*); *Sir Frank Soskice*, Q.C., and *Mervyn Heald* (*Lee & Pembertons*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

CEYLON: LAND GIVEN SUBJECT TO FIDEI
COMMISSUM: EFFECT OF PARTITION

Nadesan v. Ramasamy

Viscount Simonds, Lord Radcliffe, Lord Hodson, Lord Guest
and Mr. L. M. D. de Silva. 8th May, 1961

Appeal from the Supreme Court of Ceylon.

The appellant's grandfather by deed of 19th March, 1928, gave to the appellant's father, one of his four sons, one-fourth share of certain land in Jaffna subject to a *fidei commissum* in favour of the donee's descendants. The *fidei commissum* provided, *inter alia*, that "if found necessary" the donee "may dispose the same by way of donation or dowry to his descendants . . ." In purported exercise of that power the donee made an irrevocable donation of the same land to a daughter, one of his ten children living at the date of his death in January, 1948. One Vythilingam, pursuant to a number of subsequent dealings with the land, apparently became entitled to that one-fourth undivided share donated by the deed of 1928, and thereupon instituted proceedings under the Partition Ordinance, 1863, for partition, the other parties to the suit being the three brothers of the donee, to each of whom an equal one-fourth share of the property had been given. A partition decree having been made and a certain lot of land allotted to Vythilingam, he purported by deed to sell it to the present respondent. The appellant thereupon claimed against the respondent a declaration of title to an undivided tenth share of the partitioned lot. Section 9 of the Partition Ordinance provided that "The decree for partition . . . shall be good and conclusive against all persons whomsoever, whatever right or title they have or claim to have in the said property . . ." and the respondent alleged that the effect of that section was to confer on him an absolute and indefeasible title whether or not the fiduciary (donee) or any purchaser from him had been guilty of fraud. The district court gave judgment for the appellant, but that was reversed by the Supreme Court of Ceylon. The appellant appealed.

VISCOUNT SIMONDS, giving the judgment, said that the trial judge correctly concluded that the power reserved to the donee was fraudulently exercised by him. The respondent was not a purchaser for value without notice. Section 9 of the Partition Ordinance had no bearing on the rights of *fidei commissarii* who had no present right or interest in the land which was being partitioned. The partition had not the effect of destroying the *fidei commissum* which thereafter attached to the land allotted in severalty to the fiduciary (donee). The appellant was entitled to the declaration claimed. Appeal allowed; judgment of district judge restored.

APPEARANCES: *E. F. N. Gratiaen*, Q.C. Ceylon, and *Walter Jayawardena* (*A. L. Bryden & Williams*); *Dingle Foot*, Q.C., *R. K. Handoo* and *Dick Taverne* (*T. L. Wilson & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

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This book reproduces in an appendix certain sections of the more important enactments which deal with the subject of leases. Another appendix contains a precedent of a formal lease.

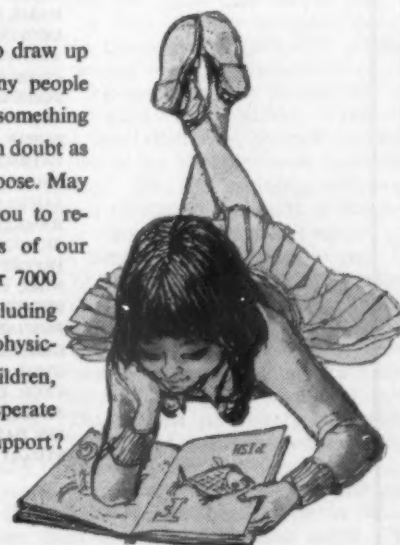
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Court of Appeal

DIVORCE: NOMINAL ORDER FOR WIFE'S MAINTENANCE: PRACTICAL EFFECT

Barnard v. Barnard

Ormerod, Willmer and Danckwerts, L.JJ. 9th May, 1961
Motion for leave to appeal.

A wife petitioned for divorce on the ground of the husband's cruelty, and included in the prayer of her petition an application for maintenance. The husband denied the charge of cruelty and cross-pledged in his answer for divorce on the ground of desertion. At the hearing of the suit, the wife did not proceed, and the husband was granted a decree nisi on the ground of desertion. After pronouncing the decree nisi, the judge ordered the husband to pay to the wife maintenance at the rate of one shilling a year. The husband moved for leave to appeal against this order.

ORMEROD, L.J., refusing leave to appeal, said that when applications for maintenance were governed by s. 19 (3) of the Matrimonial Causes Act, 1950, as that subsection was formerly worded, the court was empowered to order a husband to make payments for the wife's maintenance "on any decree for divorce or nullity of marriage," and it was not uncommon for nominal orders to be made, in order to keep alive the wife's rights. That subsection, however, must now be read in the light of the amendment made to it by s. 1 of the Matrimonial Causes (Property and Maintenance) Act, 1958. For the words "on any decree for divorce or nullity of marriage" there must now be read the words "on pronouncing a decree nisi for divorce or nullity of marriage or at any time thereafter, whether before or after the decree has been made absolute." The practical effect of that amendment was that a nominal order for maintenance no longer served any useful purpose. The motion must be dismissed.

APPEARANCES: *H. S. Law (Lowe & Co.)*; *John Wood (Kingsford, Dorman & Co., for Cooper, Son & Caldecott, Henley-on-Thames).*

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

INCOME TAX: SUCCESSION TO TRADE OF SUBSIDIARY: WHETHER TRADE "PERMANENTLY DISCONTINUED"

Aviation and Shipping Co., Ltd. v. Murray (Inspector of Taxes)

Holroyd Pearce, Upjohn and Donovan, L.JJ. 9th May, 1961

Appeal from Danckwerts, J. ([1961] 1 W.L.R. 129; p. 88, ante).

A ship-owning company (Aviation) owned three tramp ships, and its wholly owned subsidiary (Ascot) owned two tramp ships, the whole fleet being managed by a managing company and employed on time charters to the same charterer. On 31st December, 1954, Aviation succeeded to the assets of and the trade until then carried on by Ascot, acquiring the two ships, the time charters on which were transferred to Aviation. On 15th February and 14th March, 1955, respectively, Aviation sold the two ships to foreign companies, replacing them by faster diesel ships. No goodwill attached to individual tramp ships. Aviation appealed against assessment to income tax for 1956-57 made under Case I of Schedule D in respect of its profits. The Commissioners held that in December, 1954, there was a transfer of Ascot's whole trade to Aviation and that thereafter there was only one business; and they dismissed the appeal. Danckwerts, J., reversed that decision. The Crown appealed.

UPJOHN, L.J., said that the short point was whether the sale of the second ship on 14th March had the result that the trade was discontinued on that date. If the Finance Act, 1954, s. 17 (1), applied on Aviation's succession to Ascot's

trade, an artificial hypothesis had to be introduced to ascertain the tax position thereafter; Aviation had to be treated as continuing its trade with three ships and as carrying on a second trade, formerly Ascot's, with two ships, and there had to be an apportionment as on 31st December, 1954, between Ascot and Aviation. But his lordship could not accept the further argument for Aviation based on hypothetical theory, nor could he agree with Danckwerts, J., that Ascot notionally continued to trade in two ships after the succession and that when they were sold that trade was permanently discontinued. One had to look at the realities. It was quite clear that in March, 1955, there had been no discontinuance of the trade then being carried on by Aviation. It did not matter whether one looked at the trade of Ascot as having merged with that of Aviation or whether one regarded Aviation as still carrying on two trades; in either case one had to look at the real facts, and even if Ascot was to be deemed to be carrying on its trade it did not permanently discontinue its trade when the ships were sold, but merely replaced its ships by other ships, by changing its stock in trade. The appeal should be allowed.

DONOVAN, L.J., delivered a concurring judgment.

HOLROYD PEARCE, L.J., concurred. Appeal allowed. Leave to appeal granted.

APPEARANCES: *Hilary Magnus, Q.C.*, and *Alan S. Orr (Solicitor of Inland Revenue)*; *F. N. Bucher, Q.C.*, and *Peter Rowland (Clifford-Turner & Co.)*.

[Reported by Miss M. M. HILL, Barrister-at-Law]

SURTAX DIRECTION: "INTEREST" OF DEBENTURE STOCKHOLDERS

Inland Revenue Commissioners v. R. Woolf & Co. (Rubber), Ltd.

Holroyd Pearce, Upjohn and Donovan, L.JJ.

10th May, 1961

Appeal from Danckwerts, J. ([1961] 1 W.L.R. 177; p. 109, ante).

On the death in 1950 of a principal shareholder in a company, a new company was formed. The old company's shareholders were four of the deceased's relatives and his executors. The nominal capital of the company was £10,000, divided into ordinary shares of £1 each, of which only 1,000 were issued and fully paid. The shareholding was so arranged that no five persons at any one time held more than 49 per cent. of the issued share capital. In 1951 the new company bought the shareholding in the old company for £600,000, satisfied by the issue of first and second mortgage debenture stock; and on the following day the new company bought the old company's undertaking and assets for £600,000. From the time when the old company was taken over, the new company carried on its trade and two of its directors were appointed directors of the new company. The first mortgage debenture stock was secured by a fixed charge on freeholds of the new company and a fluctuating charge on its general assets, and under trust deed the new company was bound to pay the trustees of the trust deed £13,125 a year as a redemption fund and had power to redeem the stock at £105 per cent. The trust deed for the second mortgage debenture stock contained like provisions, but the specific and floating charges were second charges on the new company's freehold and general assets respectively. Most of the first mortgage debenture stock was redeemed in 1953. The interest payable to the holders of both stocks in 1952, 1953 and 1954 was deducted in arriving at the new company's actual income for those years. In 1954 a start was made on paying off the second mortgage debenture stock. Five of the former shareholders in the old company held more than half the debenture stock. The Special Commissioners, allowing the company's appeal against directions made on it under s. 245 of the Income Tax Act, 1952, held that the income was to be treated as that of the

individual members. Danckwerts, J., allowing the Crown's appeal, held that the debenture shareholders had an interest in the capital profits and income of the company and were "members" of the company within s. 255 (2) and therefore s. 245 applied to the company. The company appealed.

DONOVAN, L.J., said that "interest" in s. 255 (2) connoted an interest which gave the possessor of it a right or expectation to share in the company's profits even though they might come to him through a liquidation. Accordingly the debenture holders in the present case were not "members" of the company and the appeal would be allowed.

UPJOHN, L.J., said that the secured debenture holder had an interest in all the assets of the undertaking of the company when it became enforceable but had no interest in capital or income or profits, within the meaning of the relevant sections.

PEARCE, L.J., concurred. Appeal allowed.

APPEARANCES: *F. Heyworth Talbot, Q.C., J. G. Strangman, Q.C., Desmond Miller, Q.C., and J. R. B. Price (Allen & Overy); F. N. Bucher, Q.C., E. Blanshard Stamp and Alan S. Orr (Solicitor of Inland Revenue).*

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

JUDGMENT DEBT: SUSPENDED COMMITTAL ORDER: POWER TO VARY AMOUNT DUE

J. Cooke & Sons v. Binding

Upjohn and Donovan, L.JJ. 11th May, 1961

Appeal from county court.

The plaintiffs obtained a judgment against the defendant for £58 10s. with an order for payment of £5 a month. The defendant failed to pay any instalments. On the plaintiffs' application for a committal order the county court judge made an order committing the defendant to prison for ten days, but suspended the order on payment of 10s. a month. The defendant paid the 10s. a month but the plaintiffs applied to the county court to have the amount increased. The county court judge said that he would have increased the amount to 25s. a month, but that he had no jurisdiction to vary the order. The plaintiffs appealed.

UPJOHN, L.J., said that the county court judge was in error and that there was ample jurisdiction under s. 5 of the Debtors Act, 1869, to vary the amount payable under the suspended committal order according to the circumstances from time to time existing.

DONOVAN, L.J., agreeing, said that the county court judge had jurisdiction not only under s. 5 of the Debtors Act, 1869, but also under rr. 18 and 19 of Ord. 24 of the County Court Rules.

APPEARANCES: *W. A. Macpherson (Stafford Clark & Co., for Faber & Co., Birmingham).*

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

AGENCY: NEGLIGENCE OF DOCK PORTER

Norton v. Canadian Pacific Steamships, Ltd.

Sellers, Harman and Pearson, L.JJ. 12th May, 1961

Appeal from the presiding judge, the Liverpool Court of Passage.

Porters at the the Port of Liverpool were licensed by the Liverpool City Council, and conditions relating to their work were governed by by-laws made by the council. Under the by-laws the porters were casual workers offering their labour at the quayside to move passengers' luggage, but under police supervision as to their general behaviour. The porters' work was controlled by a senior head porter, who was informed by shipowners of a ship intending to embark or discharge passengers, and who was paid directly by the shipowners for the porters' services. Among the apparatus used by the porters in their work were four electric bogies owned jointly by the defendants and the Cunard Line and maintained

by them. On 28th October, 1957, while moving passengers' baggage from the defendants' s.s. *Empress of Britain*, one Morris, a licensed porter, negligently injured the plaintiff, a fellow-porter. The judge found that Morris was driving the bogie as the defendants' agent at the time of the accident.

SELLERS, L.J., said that the porter, Morris, never lost his independence as a licensed porter and was in complete control of the services he was rendering, using the bogie purely for the better or quicker or easier performance of the duties for which he was engaged and paid. The passengers or the defendant shipowners were the customers of the porters, and as such could direct where the baggage was to go and could complain of mishandling, but such things were the ordinary incidents of portage services. He could see no evidence of circumstances which would give rise to an agency. There was no delegation of the driving of the bogies, which was the basis of the decisions in *Ormrod v. Crosville Motor Services* [1953] 1 W.L.R. 1120, and *Hewitt v. Bonvin* [1940] 1 K.B. 194, and he would allow the appeal.

HARMAN and PEARSON, L.JJ., concurred. Appeal allowed.

APPEARANCES: *Donald Forster (Hill, Dickinson & Co., Liverpool); Glynn Burrell, Q.C. (Helder Roberts & Co., for John A. Behn, Twyford & Reece, Liverpool).*

[Reported by Mrs. IANNE G. R. MOSSA, Barrister-at-Law]

Chancery Division

RESTRICTIVE COVENANT: USE OF LAND

Marten and Another v. Flight Refuelling, Ltd., and Another

Wilberforce, J. 4th May, 1961

Action.

In 1943 trustees of a landed estate conveyed in fee simple a small farm, forming part of the estate, to the sitting tenant, he covenanting with the vendors and their successors in title that no part of the land would be used for any purposes other than agricultural without the previous written consent of the vendors. In 1942 the land had been requisitioned by the Air Ministry under the Defence Act, 1842, and this requisition continued until July, 1958, when the purchaser's executors conveyed the land, subject to the covenant, to the Secretary of State for Air. In 1947 the Ministry admitted as licensees the first defendants, who carried on an industrial undertaking as well as maintaining the Royal Air Force. The trustees and the present owner of the estate brought an action against the company and the Air Ministry for a declaration that part of the farm occupied as an airfield was subject to the covenant and that the present use of the land was in breach of the covenant, and an injunction against the company to restrain it from so using the land.

WILBERFORCE, J., said that the covenant had been taken for the benefit of the vendors' land as a single agricultural estate, that that land was sufficiently ascertainable by evidence, that it was capable of being benefited by the covenant and that the airfield was subject to the burden of the restrictive covenant. The plaintiffs were, therefore, entitled to a declaration that the airfield was subject to the covenant and that the covenant bound the land. The protection of the Defence Act, 1842, extended to such work of the company as was necessary for the purposes of the Air Force or the defence of the realm, but the plaintiffs were entitled to be protected against any further development of purely industrial activities. Order accordingly.

APPEARANCES: *G. H. Newsom, Q.C., W. L. Roots, Q.C., and J. A. Gibson (Lewis & Lewis and Gisborne & Co., for Preston & Redman, Bournemouth); Sir Milner Holland, Q.C., and Michael Browne (Lovell, Son & Pitfield, for J. & W. H. Druitt, Bournemouth); Sir Reginald Manningham-Buller, Q.C., A.-G., Peter Foster, Q.C., and E. Blanshard Stamp (Treasury Solicitor).*

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

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WILL: CONSTRUCTION: GIFT OF "MY 750 ORDINARY SHARES" WHEN 7,500 HELD*In re Tetsall, deceased;*
Foyster and Another v. Tetsall and Others

Cross, J. 9th May, 1961

Adjourned summons.

By her will dated 12th November, 1954, a testatrix who died on 6th January, 1958, bequeathed "my 750 ordinary shares" to her nephew. Under the will of her husband, who had died in 1941, the testatrix had become entitled as residuary legatee to the 750 shares; in 1951 the company had issued nine new shares for every one share held so that at the date of her will and of her death the testatrix was entitled to 7,500 shares. In 1947 and in 1952 she had made other wills with the bequest similarly worded. Her executors took out a summons to determine whether the bequest passed to her nephew all 7,500 shares or only 750 shares so that the remaining 6,750 formed part of her residuary estate.

Cross, J., said that he would admit in evidence the earlier wills since this was a case of misdescription and the court was entitled to look at any evidence tending to show that the testatrix had on other occasions used the words inaccurately. The bequest in the 1952 will did not show that the testatrix had used "my 750 ordinary shares" to mean 7,500 shares; it was possible that she had forgotten about the new issue or had not understood its import. For the same reasons the making of further wills after 1947 did not show that she had used 750 as meaning 7,500. He was unable to say from the wording that the testatrix had intended to give all her shares. As this was a specific bequest and it was impossible to say which 750 shares were intended it might be argued that the gift should fail for uncertainty, but he would treat *In re Cheadle* [1900] 2 Ch. 620, as binding him and hold that the gift was of 750 out of the 7,500 shares so that the remaining 6,750 formed part of the testatrix's residuary estate. Declaration accordingly.

APPEARANCES: A. A. Baden Fuller and Michael Johnston (Gibson & Weldon, for Kersey, Tempest & Latier, Ipswich); Bryan Clauson (Moodie, Randall, Carr & Miles, for Bankes, Ashton & Co., Bury St. Edmunds).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

Queen's Bench Division**VEHICLE LICENSING: "CARRIAGE OF GOODS FOR HIRE OR REWARD"****Sweetway Sanitary Cleansers, Ltd. v. Bradley**Lord Parker, C.J., Ashworth and Lawton, JJ.
10th May, 1961

Case stated by Evesham justices.

A company carrying on the business of emptying and cleansing septic tanks, cesspools, and the like, operated a vehicle under a private "C" carrier's licence, which permits the holder to use the vehicle for the carriage of goods "for or in connection with any trade or business carried on by him" subject to the special condition, in s. 2 (4) of the Road and Rail Traffic Act, 1933, that such vehicle "shall not be used for the carriage of goods for hire or reward." On 18th December, 1959, the vehicle emptied and cleansed a septic tank at a country club and then removed the effluent, which was treated with disinfectant during the journey a quarter of a mile along the highway to a farm, where the effluent was discharged and spread on the ground in the manner of manure. The company charged the club £3 10s. expressed to be "for hire of equipment and labour." The company was convicted by the justices on an information laid by the traffic

licensing authorities for failure to comply with the special condition in s. 2 (4). The company appealed.

LORD PARKER, C.J., said that it was clear that the effluent was "goods" within the definition in s. 36 of the Act, and also that the vehicle was a goods vehicle adapted for the carriage of effluent. The real question was whether the carriage of the effluent was a carriage of goods which the company was entitled to carry under a "C" licence. The goods were clearly being carried "in connection with" the company's trade or business; and therefore the next question was whether any reward was being paid in respect of the carriage of those goods. Though a number of operations were involved in cleaning out a cesspool, the real thing that the owner—the club in this case—wanted was for the effluent to be removed; and in his lordship's view the carriage, albeit only for a quarter of a mile, involved in the disposal of the effluent, was a substantial part of the £3 10s. consideration paid by the club for its removal. If that was so, the sole remaining question was whether the company was covered by the exception in s. 1 (5) (b) of the Act, which provided that the delivery or collection of goods which had been or were to be subjected to a process or treatment in the course of a trade or business should not be deemed to constitute a carriage of goods "for hire or reward." It was impossible to regard the adding of disinfectant which was mixed with the effluent during its carriage as subjecting the goods to any process or treatment. It was plain that this vehicle was being used for the carriage of goods for hire or reward, albeit that the carriage was in connection with the company's trade or business. The appeal should be dismissed.

ASHWORTH and LAWTON, JJ., agreed. Appeal dismissed.

APPEARANCES: M. A. B. King-Hamilton, Q.C., and J. R. C. Samuel-Gibbon (Jaques & Co., for Wellington & Clifford, Gloucester); J. R. Cumming-Bruce (Treasury Solicitor).

[Reported by Miss M. M. HILL, Barrister-at-Law]

SHIPPING: LOAD LINE: ADDITIONAL FINE: JURISDICTION**Rutberg v. Williams**

Lord Parker, C.J., Ashworth and Lawton, JJ. 10th May, 1961

Case stated by Cardiff stipendiary magistrate.

The master of a Swedish vessel pleaded guilty to a breach of s. 44 of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, in that his vessel, which had been loaded with a full cargo of iron ore at a Swedish port on 14th September, 1960, was on its arrival at Cardiff five days later loaded so as to submerge the appropriate load line on each side of the ship in salt water to a depth of 2.85 inches, contrary to s. 44 (1). No evidence was called; and the magistrate fined the master £400, that fine being made up of £100 for the statutory offence (the penalty laid down by s. 44 (2)), and an additional fine of £300, being £100 for every inch or fraction of an inch of the admitted overloading. Subsection (2) provides: "If any such ship is loaded in contravention of this section, the owner or master . . . shall for each offence be liable to a fine not exceeding £100 and to such additional fine, not exceeding the amount hereinafter specified, as the court thinks fit to impose having regard to the extent to which the earning capacity of the ship was, or would have been, increased by reason of the submersion." The magistrate stated in the case that he was of opinion that he had power to impose the additional fine, "having regard to the fact that this was obviously a commercial venture," and that he had no reason to suspect that the earning capacity of the ship had not been increased by the admitted overloading. The master appealed.

LORD PARKER, C.J., said that the magistrate was fully entitled to conclude that this was a commercial venture and

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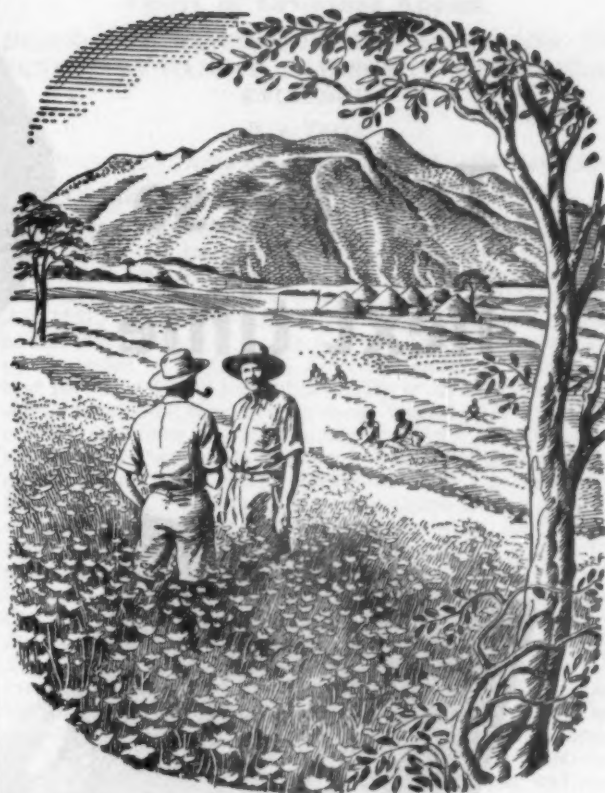
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that the earning capacity of the ship had been increased; but that was not sufficient to enable him to impose the additional fine, for the jurisdiction to impose an additional fine could be exercised only "having regard to the extent to which the earning capacity" was increased by reason of the submersion, and no evidence at all was tendered in this case as to the extent of that increase. Accordingly the appeal succeeded to the extent that the additional fine of £300 must be quashed.

ASHWORTH and LAWTON, JJ., agreed. Appeal allowed. Additional fine quashed.

APPEARANCES: *M. J. Mustill (Holman, Fenwick and Willan, for Lean & Lean, Cardiff); J. R. Cumming-Bruce (Treasury Solicitor).*

[Reported by Miss M. M. Hill, Barrister-at-Law]

LEGAL AID TAXATION: SCOTTISH SOLICITORS AS AGENTS

McCullie v. Butler

Diplock, J., sitting with two assessors

10th May, 1961

Review of taxation.

The legally aided plaintiff, an infant, sued the defendant for personal injuries. Shortly after the accident her family moved to Scotland and instructions in respect of the High Court action had to be taken in Scotland. The parties believed the Scottish solicitors were the principals of the London solicitors, which was the reversal of the true situation. The action was heard in London by Donovan, J., who gave judgment for the defendant, and on appeal to the Court of Appeal his judgment was upheld. On taxation of the plaintiff's solicitors' bill of costs the taxing master disallowed five items concerning abortive negotiations between the plaintiff's solicitors and the defendant's insurers on the ground that the latter were not parties to the action. He further disallowed any items in respect of the bill of costs of the Scottish solicitors but made some allowance in respect of the disbursements he regarded as properly incurred for services, under the heading "Instructions for Brief."

DIPLOCK, J., delivering judgment in open court, said that the five items dealing with negotiations were properly recoverable out of the legal aid fund, for such negotiations were invaluable in the interests of the client and the fund as often leading to a settlement and the avoidance of the incurring of costs. For the purposes of the Legal Aid and Advice Act, 1949, Scottish solicitors were in no different position from other foreign lawyers or other foreign professional or ordinary agents employed to prepare litigation in this country; they were not solicitors within the meaning of that expression in the Act, and para. 3 (2) of Sched. III thereto had no application to Scottish or other foreign lawyers but related to ordinary agency between solicitors of the Supreme Court. Accordingly, charges incurred by and paid to such solicitors and agents were properly taxable as disbursements in the ordinary course. Where there was taxation under the Act of 1949, such charges should not, as was done in this case, be included in the item "Instructions for Brief." The amount to be allowed for such disbursements was the proper rate of charge in the country concerned for the performance of the necessary services through the agent employed, and to assist the taxing master in determining the proper rate of charge it was desirable in a case like this that there should be a detailed statement of the circumstances which required the services of the foreign lawyer and a detailed charge for the individual items. Order accordingly.

APPEARANCES: *E. P. Wallis-Jones (Potter, Crundwell and Bridge, Farnham); Brian Neill (Joynson-Hicks & Co.).*

[Reported by Miss J. A. BURRAGE, Barrister-at-Law]

Court of Criminal Appeal

DIMINISHED RESPONSIBILITY: DIRECTION TO JURY: JURY HANDED TRANSCRIPT OF MEDICAL EVIDENCE

R. v. Terry

Lord Parker, C.J., Ashworth and Lawton, JJ. 8th May, 1961

Appeal against conviction.

The appellant was charged with the capital murder of a bank guard. He had committed the killing in the course of a bank raid and one defence raised was that he was suffering from diminished responsibility under s. 2 of the Homicide Act, 1957. Evidence was given by two psychiatrists to whom he had told the story of his life, and that he had felt possessed by the spirit of a deceased American gangster: one said that he was suffering from abnormality of mind, induced by schizophrenia and increased by drugs, whereby his ability to control his actions was substantially impaired, and the other that he was suffering from delusions. Both those psychiatrists accepted, and based their evidence on, what the appellant had told them. Two doctors for the Crown gave emphatic evidence that the appellant was putting on an act for the benefit of his psychiatrists and was shamming. Stable, J., summing up, referred to the words of s. 2 of the Act of 1957 without explaining them (although he recalled the jury after they had retired and referred them to passages in *Rose v. R.* [1961] 2 W.L.R. 506; p. 253, *ante*; and *R. v. Byrne* [1960] 2 Q.B. 396), and said that he was not going to analyse the medical evidence in detail but that the jury could take it that the defence doctors had expressed the opinion that the appellant was suffering from abnormality of the mind induced by disease such as to impair his responsibility and that the evidence for the Crown was that he was shamming and the story that he was inhabited by the mind of the gangster was false. The judge handed to the jury one copy, some 100 pages, of the transcript of the medical evidence. The jury convicted the appellant of murder and he appealed.

LORD PARKER, C.J., said that since *Rose v. R.* it was insufficient merely to refer the jury to the words of s. 2 of the Act of 1957 (see *R. v. Spriggs* [1958] 1 Q.B. 270) but they should be given an explanation of its terms as interpreted in *R. v. Byrne*. The court disapproved of the practice of handing a transcript of the medical evidence to the jury; it was a bad practice and an inadequate direction, for in most cases medical evidence was difficult and it was impossible for the jury to appreciate it without a proper direction. But in this case the only question for the jury was whether the appellant was fooling his psychiatrists or whether the story he had told them was genuine. In that light, the summing up was unexceptionable and there were no grounds for the court to interfere. Appeal dismissed.

APPEARANCES: *M. A. B. King-Hamilton, Q.C., and John Bolland (Registrar, Court of Criminal Appeal); Geoffrey Lawrence, Q.C., and Petre Crowder (Director of Public Prosecutions).*

[Reported by Miss J. F. LAMB, Barrister-at-Law]

LIFE SENTENCE: MENTAL TREATMENT REQUIRED: WHETHER PROPER EXERCISE OF DISCRETION

R. v. Morris

Lord Parker, C.J., Ashworth and Lawton, JJ. 9th May, 1961

Appeal against sentence.

The appellant, on being indicted for murder, raised the defence of diminished responsibility under s. 2 of the Homicide Act, 1957. There was evidence that he was suffering from depression superimposed on a chronic anxiety state which substantially impaired his mental responsibility. The

prosecution sought to rebut the plea of diminished responsibility by leading evidence of insanity, but the judge refused to allow that to be done, although evidence was in fact given by the prosecution doctors. The jury brought in a verdict of diminished responsibility. Arrangements had been made whereby the appellant could be admitted to a local mental hospital, and the judge was asked to make a hospital order under s. 60 of the Mental Health Act, 1959. Jones, J., said that he was not at all sure that the appellant's mental state was not even worse than that of diminished responsibility and said: "I am not going to have the responsibility of setting you anywhere near liberty. I am going to pass such a sentence on you as will involve you being entirely in the hands of the Secretary of State, who has complete powers to send you to the right place." He passed a sentence of life imprisonment. The appellant appealed.

LORD PARKER, C.J., said that, although s. 60 of the Act of 1959 gave a wide discretion, the basic principle was that, in the ordinary case where the court did not intend punishment as such but that the offender should receive mental treatment and be at large as soon as that was completed, a proper exercise of that discretion demanded that the powers under the section be exercised and that the matter should not be left to the Secretary of State. In a case where the offender had some responsibility for his act which justified a prison sentence it would be proper to give imprisonment, allowing the Secretary of State to exercise his powers under s. 72 in

order that any necessary treatment might be given. But here, although the judge, unlike some other judges, had not allowed the prosecution to assert insanity, evidence was given by the Crown doctors and the judge was anxious because he thought that the mental incapacity was such that the appellant ought to be in a secure hospital where special steps were taken to see that the inmates were not at large. There being no evidence of a vacancy in such a hospital, it was a proper exercise of the judge's discretion to say that in all the circumstances of the case he was not going to take the responsibility of putting the appellant in a local hospital where he might become at large. Appeal dismissed.

APPEARANCES: *Breuan Rees* (Registrar, Court of Criminal Appeal); *Sir Reginald Manningham-Buller*, Q.C., A.-G., and *J. R. Cumming-Bruce* (Treasury Solicitor).

[Reported by Miss J. F. LAMB, Barrister-at Law]

THE WEEKLY LAW REPORTS

CASES INCLUDED IN TODAY'S ISSUE OF THE W.L.R.

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<i>B. v. H</i> (p. 301, ante)	1	856
<i>Howard's Will Trusts, In re</i> (p. 347, ante) ..	2	821
<i>Johnson v. J. Stone & Co. (Charlton), Ltd.</i> (p. 209, ante)	1	849
<i>Sparrow v. Fairey Aviation Co., Ltd.</i>	1	844

IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills received the Royal Assent on 9th May:—

Allhallows Staining Churchyard.
Clerical, Medical and General Life Assurance.
Great Northern London Cemetery Company.
Lancashire Quarter Sessions.
Mersey Tunnel.
National Health Service.
Rio Tinto Rhodesian Mining Limited.
Shell Brazil.
White Fish and Herring Industries.
Winchester Cathedral Close.

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

British Transport Commission Bill [H.C.] [8th May.
Court of Chancery of Lancaster (Amendment) Bill [H.C.] [8th May.
Covent Garden Market Bill [H.C.] [10th May.
Department of Technical Co-operation Bill [H.C.] [11th May.
Local Authorities (Expenditure on Special Purposes) (Scotland) Bill [H.C.] [11th May.
London County Council (Money) Bill [H.C.] [8th May.
Rating and Valuation Bill [H.C.] [11th May.
Rural Water Supplies and Sewerage Bill [H.C.] [8th May.

Read Second Time:—

Carriage by Air Bill [H.C.] [9th May.
Home Safety Bill [H.C.] [8th May.
Hyde Park (Underground Parking) Bill [H.C.] [11th May.
Oaths Act, 1888 (Amendment) Bill [H.C.] [9th May.
Private Street Works Bill [H.C.] [8th May.
Republic of South Africa (Temporary Provisions) Bill [H.C.] [11th May.
Restriction of Offensive Weapons Act, 1959 (Amendment) Bill [H.C.] [9th May.
Sheriffs' Pensions (Scotland) Bill [H.C.] [8th May.

Read Third Time:—

City of London (Various Powers) Bill [H.L.] [10th May.
London County Council (General Powers) Bill [H.L.] [10th May.
Police Pensions Bill [H.L.] [11th May.

In Committee:—

Affiliation Proceedings (Blood Tests) Bill [H.L.] [9th May.
Industrial and Provident Societies Bill [H.C.] [10th May.
Road Traffic Bill [H.L.] [9th May.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time:—

Credit-Sale Agreements (Scotland) Bill [H.C.] [11th May.
To extend to Scotland sections one and three of the Hire-Purchase Act, 1938.

Read Second Time:—

Legal Profession (Qualification for Office) Bill [H.C.] [12th May.

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(Continued on p. xvii)

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May

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| 8th | Legal Aid and Advice Act, 1949, Pt. I, in connection with certain proceedings in courts of summary jurisdiction or quarter sessions (see p. 307, <i>ante</i>).
Legal Aid (Assessment of Resources) (Amendment) Regulations, 1961. (S.I. 1961 No. 555.)
Legal Aid (General) (Amendment) Regulations, 1961. (S.I. 1961 No. 556.) |
| 15th | Road Traffic Act, 1956, s. 2, as respects vehicles first registered on or after 1st January, 1949.
Wages Regulation (Retail Drapery, Outfitting and Footwear) Order, 1961. (S.I. 1961 No. 759.) |

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

ANNUAL MEETING: NEW CHAIRMAN

The seventy-second annual general meeting of the Society was held at Oyez House, Breems Buildings, Fetter Lane, London, E.C.4, on Tuesday, 16th May, 1961, when Mr. K. D. Cole was in the chair.

The chairman's statement circulated with the report said: "Once again, I am pleased to submit to you a very satisfactory report of the year's working, following the substantial increases in sales and profits in 1959.

Sales.—Sales in almost all departments increased further in 1960. The number of law forms sold reached a new peak of 11 million and our Office Furniture Department more than doubled its sales during the year. The appointment of area sales managers at the end of last year to co-ordinate and support the work of our representatives will assist in developing our sales generally.

Profit.—The profit before tax increased by £52,256. Although we have continued our policy of avoiding price increases as far as possible, our rate of profit has been maintained in spite of rising costs. This has been made possible by the continued increase in sales and by the further steps we have taken to improve our efficiency.

Dividend.—As previously forecast, the directors recommend a final dividend of 8 per cent., less tax, payable on the capital as increased by the capitalisation issue of last year. The shares issued this year by way of rights will not rank for this dividend. With the interim dividend of 6 per cent. paid on the lower capital, the total distribution is equivalent to 18 per cent., compared with 16 per cent. in respect of 1959.

Capital.—In November last, following a revaluation of our freehold properties, 150,000 shares were issued to shareholders from capital reserve on the basis of one for two. In March of this year, 90,000 shares were offered to shareholders and 86,038 (95.6 per cent.) were taken up. Applications for 63,760 additional shares were received and, in view of the small number available, allotments had to be on a very small scale. The directors regret the disappointment caused to so many shareholders.

Increased accommodation.—The additional space provided by the occupation of Norwich House, adjoining Oyez House, has proved of great value in providing much needed extra room for a number of departments. We are negotiating for further premises in the vicinity for use primarily as a larger store for our Office Furniture Department.

During the year, the West End Copying Department was moved to larger and more convenient premises and the accommodation of our Westminster Copying Department was extended. Improvements at Birmingham and Cardiff have been carried out this year.

Printing works.—Following the new agreements as to wages and hours reached in September, 1959, we discussed with our works employees means of off-setting the increase in costs which would otherwise have resulted. Their co-operation was readily

given and the results were so satisfactory that a further reduction of hours from 42 to 40 per week was introduced in our London and Provincial Works in October of last year.

Buromatic photocopier.—Last year, a new model of the Buromatic photocopier employing a greatly improved reproduction process was developed in conjunction with Kodak, Ltd. Certain technical difficulties arose in production but these have now been overcome and supplies of the new machine are being increased to meet the substantial number of orders in hand.

Assistant General Manager.—In July, Mr. W. Lubin, Head Stationery Manager, was appointed Assistant General Manager in order to strengthen the general executive of the Society. He joined the staff in 1925 and became Head Stationery Manager in 1953.

Staff.—The year has again been one of great pressure, particularly on our senior executives and senior staff, and the continuance of such gratifying results has only been possible by the loyal co-operation and help of all our employees. I am sure all shareholders would wish me to express their sincere thanks for the work they have done on our behalf.

Chairmanship.—This is the last occasion upon which I shall take the chair at the annual general meeting. I succeeded Sir Alan Gillett as chairman in 1953 and have therefore been chairman for eight years. I have decided that in all the circumstances the time has come for me to step down. I am glad to say that Mr. Wentworth Pritchard has accepted the directors' invitation to take my place as chairman, with effect from the end of the annual meeting. My fellow directors have invited me to continue on the Board, which I am very happy to do.

Mr. Pritchard has been a director since 1947 and is very well known in the legal profession, having been a member of the Council of The Law Society for many years. He will have the full support of the directors and staff as I have had during the past eight years.

The current year.—The high level of sales during 1960 is being maintained and we can look forward to another satisfactory year. Costs, however, continue to rise and the expansion of our business has necessitated increased expenditure, the full benefit from which will not be felt immediately."

The report and accounts were unanimously approved, and Mr. J. F. Burrell and Mr. C. P. L. Whishaw, retiring by rotation, were re-elected as directors.

The remuneration of the auditors was fixed for the ensuing year.

Mr. N. D. Vandyk proposed a vote of thanks and appreciation to Mr. Cole upon his retirement from the chair. During his eight years of chairmanship virtually a hat trick of doubles had been scored. In that period the Society's sales had more than doubled, its capital had likewise been more than doubled by scrip issues

and the recent rights issue, and the amount distributed in dividends had nearly doubled. The successful way in which the problems posed by such an expansion had been faced and solved (including the building of the South Block of Oyez House) justified a feeling of confidence in the Society's future. On behalf of the shareholders and the staff he thanked Mr. Cole for his work as chairman and said how glad they were that he was remaining on the Board. At the same time he expressed their

good wishes to Mr. Wentworth Pritchard for continued progress under his chairmanship.

Mr. G. H. Drury, O.B.E., seconded the vote of thanks.

In reply, Mr. Cole expressed his appreciation and said that he attributed the successful results to team work from the top to the bottom in the Society.

The meeting was ended by Mr. Wentworth Pritchard thanking the members for their good wishes.

BOOKS RECEIVED

Investments in Land and Property. By W. A. LEACH, F.R.I.C.S., and E. G. WENHAM, B.Sc. (Lond.), F.R.I.C.S., F.A.I. pp. xviii and (with Index) 218. 1961. London: Sweet & Maxwell, Ltd. £1 10s. net.

The Rule of Law in a Free Society. A report on the International Congress of Jurists, New Delhi, India, 5th-10th January, 1959. Prepared by NORMAN S. MARSH, M.A., B.C.L., of the Middle Temple, Barrister-at-Law. With a Foreword by JEAN-HAVIEN LALIVE, LL.D., A.M. pp. xi and 340. 1960. Geneva: International Commission of Jurists (from whom it is obtainable).

The Library of World Affairs: No. 50, Consular Law and Practice. By LUKE T. LEE, Ph.D., Carnegie Research Fellow at the Harvard Law School. Published under the auspices of the London Institute of World Affairs. pp. xxii and (with Index) 431. 1961. London: Stevens & Sons, Ltd. £5 5s. net.

A Digest of South African Native Civil Case Law, 1894-1957. Compiled by H. W. WARNER, Late Permanent Member, Southern Native Appeal Court. pp. xii and (with Index) 490. 1961. London: Sweet & Maxwell, Ltd. South Africa: Juta & Co., Ltd. £10 2s. net.

This is Your Child. The Story of the National Society for the Prevention of Cruelty to Children. By ANNE ALLEN and ARTHUR MORTON. pp. x and (with Index) 198. 1961. London: Routledge & Kegan Paul, Ltd. £1 5s. net.

Notes on District Registry Practice and Procedure. Twelfth Edition. By THOMAS STANWORTH HUMPHREYS. pp. vi and (with Index) 106. 1961. London: The Solicitors' Law Stationery Society, Ltd. 15s. net.

Practical Points on Leases. A Surveyor's Experience. By W. A. LEACH, F.R.I.C.S. pp. xiv and (with Index) 307. 1961. London: Sweet & Maxwell, Ltd. £2 10s. net.

County Court Notebook. Ninth Edition. By ERSKINE POLLOCK, LL.B., Solicitor (Honours). pp. 28. 1961. London: The Solicitors' Law Stationery Society, Ltd. 3s. net.

Spicer and Pegler's Practical Book-keeping and Commercial Knowledge. Eleventh Edition. By W. W. BIGG, F.C.A., H. A. R. J. WILSON, F.C.A., and A. E. LANGTON, LL.B. (Lond.), F.C.A. pp. xv and (with Index) 475. 1961. London: H. F. L. (Publishers), Ltd. £1 1s. net.

Stone's Justices' Manual, 1961. Ninety-third Edition. Edited by JAMES WHITESIDE, O.B.E., Solicitor, and J. P. WILSON, Solicitor. pp. cccxiv, 3193 and (Index) 242. 1961. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. Two Volumes. Thick Edition: £5 2s. 6d. net. Thin Edition: £5 7s. 6d. net.

Official Architecture and Planning Year Book, 1961. Edited by ROBERT MCKOWN. pp. (with Index) 207. 1961. London: Anstey Press, Ltd. 15s. net.

The Struggle for Penal Reform: The Howard League and Its Predecessors. By GORDON ROSE. Published under the auspices of the Institute for the Study and Treatment of Delinquency. pp. xii and (with Index) 328. 1961. London: Stevens & Sons, Ltd. Chicago: Quadrangle Books, Inc. £2 10s. net.

The Crusade against Capital Punishment in Great Britain. By ELIZABETH ORMAN TUTTLE. Published under the auspices of the Institute for the Study and Treatment of Delinquency. pp. xii and (with Index) 177. 1961. London: Stevens & Sons, Ltd. Chicago: Quadrangle Books, Inc. £1 10s. net.

"THE SOLICITORS' JOURNAL," 18th MAY, 1861

On 18th May, 1861, THE SOLICITORS' JOURNAL wrote: "A petition against the income tax signed, we understand, by not fewer than 700 solicitors . . . has been presented to the House of Commons. We believe that it speaks the mind of the entire profession as to the grievous hardship in respect of special taxation under which solicitors labour, while in common with all professional men and others earning precarious incomes, they have to complain of the unequal and unfair pressure of the present mode of raising the income tax. The petition is as follows: That there are about 10,000 practising attorneys and solicitors in England and Wales. That every attorney and solicitor on entering the profession becomes bound . . . by articles of clerkship on which he paid a very heavy stamp duty. If his articles bore date prior to 4th August, 1853, the duty was £120 and if subsequently to that date the duty was £60. That every attorney and solicitor also paid a stamp duty of £25 on his admission. That no attorney or solicitor can lawfully

practise . . . unless he annually takes out a certificate for which . . . he annually pays, if in London, a stamp duty of £9, and, if in the country, a stamp duty of £6. . . . That the income derived by the great body of attorneys and solicitors from . . . their profession is very limited and, although there may be some large and long-established firms whose incomes are considerable, these are comparatively very few. . . . That there is reason to believe that the total incomes of the whole body of attorneys and solicitors do not amount on the average to £200 a year each. . . . That the incomes of nearly all the practising attorneys and solicitors are uncertain and variable and depend almost wholly on their individual personal exertions; they are subject to diminution from illness, and, of course, cease entirely on death. . . . The petition prays that Parliament may adjust the amount of the income tax and distinguish precarious and uncertain professional incomes from incomes which are fixed and certain."

Obituary

Mr. EDWARD REUBEN MORRISON, solicitor, of Cooper Street, Manchester, 2, died on 15th April, aged 37. He was admitted in 1950.

Mr. WILLIAM LUARD RAYNES, retired solicitor, of Cambridge, died on 7th May, aged 92. Admitted in 1894, he was twice Mayor of Cambridge and a Freeman of the city.

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Harrow.—CORBETT ALTMAN & CO. F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 40 College Road, Harrow. Tel. Harrow 6222. Also Rating, Compensation and Planning Surveyors.
Harrow.—P. N. DEWE & CO. (P. N. Dewe, F.A.I.P.A., J. Ferrari, F.R.I.C.S., F.A.I., M.R.San.L., J. Cosgrave, A.R.I.C.S., A.M.I.Struct.E.), 42 College Road, Tel. 4288/90 Associated offices at Hillingdon. Established 1925.
Hendon and Colindale.—HOWARD & MANNING (G. E. Manning, F.A.I.P.A., F.V.I.), Auctioneers, Surveyors and Valuers, 218 The Broadway, West Hendon, N.W.9. Tel. Hendon 7686/8, and at Northwood Hills, Middx. Tel. Northwood 2215/6.
Hendon.—DOUGLAS MARTIN & PARTNERS, LTD.—Douglas Martin, F.A.I.P.A., F.V.A.; Bernard Roach, F.A.I.P.A.; Jeffrey Lorenz, F.V.A.; John Sanders, F.V.A.; Alan Fritchard, A.V.A. Auctioneers, Surveyors, etc., Hendon Central Tube Station, N.W.4. Tel. HEN 6333.
Hendon.—M. E. NEAL & SON, 102 Brent Street, N.W.4. Tel. Hendon 6123. Established 1919.
Hilford.—RANDALLS, Chartered Surveyors and Auctioneers (established 1884), 67 Cranbrook Road, Tel. VALENTINE 6272 (10 lines).

Leyton.—HAROLD E. LEVI & CO., F.A.I.P.A., Auctioneers and Surveyors, 760 Lea Bridge Road, Leyton, E.17. Tel. Leytonstone 4023/4024.
Leyton and Leytonstone.—R. CHEKE & CO., 252 High Road, E.10. Tel. Leytonstone 7733/4.
Leytonstone.—COMPTON GUY, Est. 1899, Auctioneers, Surveyors and Valuers, 55 Harrington Road, Tel. Ley 1123. And at 1 Cambridge Park, Wanstead. Tel. Wan 5148; 13 The Broadway, Woodford Green, Tel. Buc 0464.
Leytonstone.—PETTY, SON & PRESTWICH, F.A.I., Chartered Auctioneers and Estate Agents, 682 High Road, Leytonstone, E.11. Tel. LEY 1194/5, and at Wanstead and South Woodford.
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Norbury.—DOUGLAS GRAHAM & CO., Estate Agents, Property Managers, 1364 London Road, S.W.16. Tel. POL 1313/1690. And at Thornton Heath, Sutton and Piccadilly, W.1.
Putney.—QUINTON & CO., F.A.I., Surveyors, Chartered Auctioneers and Estate Agents, 153 Upper Richmond Road, S.W.15. Tel. Putney 6249/6617.

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Stanmore.—GLOVER of STANMORE, F.V.I., The Broadway (and at Station), Grimsdyke 2241 (5 lines).
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Wood Green.—WOOD & LOACH, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 723 Lordship Lane, N.22 (adjacent Eastern National Bus Station, close to Wood Green Tube Station). Tel. Bowes Park 1632.

PROVINCIAL

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Bedford.—ROBINSON & HALL, 15A St. Paul's Square, Chartered Surveyors. Tel. 22012/3.
Luton.—RICHARDSON & STILLMAN, Chartered Auctioneers and Estate Agents, 30 Alma Street, Tel. Luton 6492/3.

BERKSHIRE

Abingdon, Wantage and Didcot.—ADKIN, BELCHER & BOWEN, Auctioneers, Valuers and Estate Agents. Tel. Nos. Abingdon 1078/9, Wantage 48. Didcot 3197.
Bracknell.—HUNTON & SON, Est. 1870, Auctioneers and Estate Agents, Valuers. Tel. 23.
County of Berkshire.—TUFNELL & PARTNERS, Auctioneers, Valuers and Surveyors, Sunninghill (Ascot 1666), Windsor (Windsor 1) and Stratley (Goring 45).
Didcot and District.—E. P. MESSENGER & SON, Chartered Auctioneers and Estate Agents, etc., The Broadway. Tel. Didcot 2079.
Partridge.—HOBBS & CHAMBERS, Chartered Surveyors, Chartered Auctioneers and Estate Agents. Tel. Farlington 2113.
Maidenhead.—L. DUDLEY CLIFTON & SON, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 32 Queen Street. Tel. 62 and 577 (4 lines).
Maidenhead, Windsor and Sunningdale.—GIDDY & GIDDY, Tel. Nos. Maidenhead 53, Windsor 73, Ascot 73.
Newbury.—DAY, SHERGOLD & HERBERT, F.A.I., Est. 1889, Chartered Auctioneers and Estate Agents, Market Place, Newbury. Tel. Newbury 775.
Newbury.—DREWEATT, WATSON & BARTON, Est. 1759, Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1.
Newbury.—C. G. FOWLE, F.R.I.C.S., F.A.I., Chartered Surveyor, 16 Bartholomew Street. Tel. 761 (2 lines).
Newbury and Hungerford.—W. N. NEATE & SONS, Est. 1876, Agricultural Valuers, Auctioneers, House and Estate Agents. Tel. Newbury 304 and 1620, Hungerford 8.
Reading.—HASLAM & SON, Chartered Surveyors and Valuers, Friar Street, Chambers. Tel. 54271/2.
Windsor and Reading.—BUCKLAND & SONS, High Street, Windsor. Tel. 48. And 154 Friar Street, Reading. Tel. 51370. Also at Slough and London, W.C.

BUCKINGHAMSHIRE

Amersham and The Chalfonts.—SWANNELL & SLY, Hill Avenue, Amersham. Tel. 73. Valuers, Auctioneers, etc.
Amersham, Chesham and Great Missenden.—HOWARD, SON & GOOCH, Auctioneers, Surveyors, and Estate Agents, Oakfield Corner, Amersham (Tel. 1430), and at Chesham 8097 and Great Missenden 2194.
Aylesbury.—PERCY BLACK & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 18 Market Square. Tel. 4661/3.
Aylesbury.—W. BROWN & CO., 2 Church Street. Tel. 4706/7. Urban and Agricultural practices.
Boscomfield.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents. Opposite the Post Office. Tel. 1290/1.
Farnham Common.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, The Broadway. Tel. 109.
High Wycombe.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 30 High Street. Tel. 2576/7/8/9.
High Wycombe.—HUNT & NASH, F.R.I.C.S., F.A.I., Chartered Surveyors, 15 Crenson Street. Tel. 884.
High Wycombe and South Bucks.—H. MORCOM JONES & CO., F.A.I., Chartered Auctioneers, 86 Easton Street. Tel. 1494/5.
North Bucks.—WOODHOUSE NEALE, SONS & CO., Estate Agents and Valuers, Estate Offices, Bletchley. Tel. 2201/2.

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Slough.—HOUSEMANS, Estate and Property Managers, Surveyors, Valuers, House, Land and Estate Agents, Mortgage and Insurance Brokers, 46 Windsor Road. Tel. 25496. Also at Ashford, Middlesex.
Slough and Gerrards Cross.—GIDDY & GIDDY, Tel. Nos. Slough 23379, Gerrards Cross 3987.

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Cambridge and County.—WESTLEY & HUFF, Auctioneers, Surveyors and Valuers, 10 Hills Road, Cambridge. Tel. 55665/6.

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Birkenhead.—SMITH & SONS (Est. 1840), Auctioneers, Valuers, BIRKENHEAD (Tel. 1590); and at Liverpool.
Birkenhead and Wirral.—JAMES HARLAND & CO., Chartered Auctioneers, Chartered Surveyors and Estate Agents, Valuers, 46 Church Road, Birkenhead. Tel. 1597 (3 lines).
Chester.—BERESFORD, ADAMS & SON, (Est. 1899.) Auctioneers, Valuers and Surveyors, 22 Newgate Street. Tel. No. 23401.
Chester.—BROWNS OF CHESTER, LTD., Auctioneers, Valuers and Estate Agents, 103 Foregate Street. Tel. Chester 21495/6.
Chester.—HARPER, WEBB & CO. (Incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. Chester 20685.
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(Continued on p. xviii)

CORNWALL (continued)

St. Austell and Looe.—LAMPISH & NANCOLLAS, Chartered Auctioneers and Estate Agents. St. Austell 3254/5. Looe 309.
St. Austell, Lostwithial and Liskeard.—ROWSE, JEFFERY & WATKINS, Auctioneers, Valuers, Surveyors and Estate Agents. St. Austell 3483/4. Lostwithial 451 and 245. Liskeard 2400.
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Barnstaple and N. Devon.—BRIGHTON GAY, F.A.I.P.A., Surveyors, Valuers, Auctioneers, Joy Street, Barnstaple. Tel. 4131.
Barnstaple and N. Devon.—J. GORDON VICK, F.R.I.C.S., F.A.I., Chartered Surveyor, Chartered Auctioneer. Tel. 4388.
Bideford and North Devon.—R. BLACKMORE & SONS, Chartered Auctioneers and Valuers. Tel. 1133/1134.
Bideford and North Devon.—A. C. HOOPER & CO., Estate Agents and Valuers. Tel. 708.
Brixham and Torbay.—FRED PARKES, F.A.I.P.A., Estate Agent, Auctioneer and Valuer, 15 Bolton Street. Tel. 2036.
Devon and Exeter.—GUY MICHELMORE & CO., Norwich Union House, Exeter. Tel. 76464/5.
Devon, Exeter and S.W. Counties.—RICKARD, GREEN & MICHELMORE, Estate Agents, Auctioneers, Surveyors and Valuers, 82 Queen Street, Exeter. Tel. 74072 (2 lines).
Exeter.—RIFTON, BOSWELL & CO., Incorporated Auctioneers and Estate Agents, Valuers and Surveyors. Est. 1884. Tel. 59378 (3 lines).
Ilfracombe.—W. C. HUTCHINGS & CO., Incorporated Auctioneers, Valuers and Estate Agents. Est. 1887. Tel. 138.
Okehampton, Mid Devon.—J. GORDON VICK, Chartered Surveyor, Chartered Auctioneer. Tel. 22.
Paignton, Torbay and South Devon.—TUCKERS, Auctioneers and Surveyors, Paignton. Tel. 59024.
Plymouth.—D. WARD & SON, Chartered Surveyors, Land Agents, Auctioneers and Valuers. (Est. 1872.) 11 The Crescent, Plymouth. Tel. 66251/4.
Sidmouth.—POTBURY & SONS, LTD., Auctioneers, Estate Agents and Valuers. Tel. 14.
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Poole, Parkstone, Bournemouth.—RUMSEY & RUMSEY, Head Office, 111 Old Church Street Road, Tel. Bournemouth 21212. 14 Branch Offices in Hants and Dorset and Channel Islands.
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EAST ANGLIA

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Benfleet, Hadleigh and South-East Essex.—JOHN S. LLOYD & CO., Chartered Auctioneers and Estate Agents. Head Office: Estate House, Hadleigh, Essex. Tel. 58523 and 59174.
Brentwood and Mid-Essex.—HOWARD'S & CO. (BRENTWOOD), LTD., Surveyors, Valuers and Estate Agents, 143 High Street, Brentwood. Tel. Brentwood 4338.
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GLOUCESTERSHIRE

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Ramsgate.—LESLIE HOGGIN, F.R.I.C.S., Chartered Surveyor, Auctioneer, Valuer and Estate Agent, 50 Queen Street. Tel. Thanet 53222/3.

Please mention "THE SOLICITORS' JOURNAL" when replying to Advertisements

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyes House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Title—IMPLIED ASSENT BY EXECUTORS IN THEIR OWN FAVOUR AS TRUSTEES FOR SALE BEFORE 1926

Q. The testator (*T*) by his will appointed *A* and *B* executors and devised his real estate upon trust for sale with power to postpone and to pay income of the residuary estate to his daughter *D*, the wife of *A*, during her life or until she became a widow, when she became absolutely entitled thereto. Probate of his will was granted to *A* and *B* in 1920. No assent was signed by *A* and *B*. *A* died in 1950, so *D* became a widow and absolutely entitled to the residuary estate; in December, 1950, *B* as surviving personal representative assented to the vesting in *D* of the unsold residuary real estate of *T* in fee simple absolutely. A memorandum of that assent was endorsed on the probate of the will of *T*. The assent did not contain a statement that *A* and *B* had not made any previous assent or conveyance, etc. In submitting abstract of title to proposed mortgagees' solicitors, the probate of the will of *T* with the assent of December, 1950, and of the memorandum endorsed on probate have been abstracted; the mortgagees' solicitors contend that, as *T* died before 1st January, 1926, the will of *T* should be abstracted. *D*'s solicitors contend that the curtain applies. Which is correct?

A. (1) In our view a good title has not been deduced and the will may have to be abstracted (and account taken of the points raised in para. (2)). We consider that the facts indicate an implied assent by *A* and *B* as executors in their own favour as trustees for sale prior to 1926. Presumably the estate of *T* was duly administered; thereafter *A* and *B* would hold as trustees for sale. See the explanation in Emmet on Title, 14th ed., vol. 2, p. 468. The result was in our opinion that *A* and *B* ceased to be executors and could no longer transfer the legal estate by assent. (2) We consider that, on the death of *A*, the legal estate was held by *B* on trust for sale, the proceeds to be held for *D*. Consequently we do not think that *D* now holds the legal estate; the protection of the Administration of Estates Act, 1925, s. 36 (6) (Emmet, op. cit., p. 472) does not apply in the circumstances. A conveyance should be obtained from *B*. If, however, the mortgagees will accept the title in reliance on *D*'s equitable interest, then the will could be abstracted to prove that interest.

Administration of Estates—POWER OF APPROPRIATION

Q. We are acting in the administration of the estate of Mr. *A*, who died intestate leaving his widow Mrs. *A* and two infant children. The administrators are Mrs. *A* and Mr. *X*, whom she nominated as co-administrator. The estate consists of the following items: (1) the matrimonial home, being a freehold property, £4,750; (2) shares in a private limited company, £55; (3) debt owing by that company to the deceased, £1,500; (4) lease of a shop, £500; (5) cash (after deduction of estate duty, debts and costs), £600: total, £7,405. As the net amount of the estate is over £5,000, the widow is not entitled to the whole estate. It will be noted that items (2), (3) and (4) are not trustee

securities, and, as there is no wish to have them sold, the administrators propose to appropriate those assets to Mrs. *A*. Mrs. *A* proposes to give notice to the administrators that she wishes to have her own life interest redeemed, and also notice under s. 5 of the Intestates' Estates Act, 1952, regarding the matrimonial home. After Mrs. *A* has had her own life interest redeemed, it is calculated that, apart from interest on the sum of £5,000 (which Mrs. *A* intends to waive, as she has had the benefit of most of the assets in the estate since the date of Mr. *A*'s death), the value of Mrs. *A*'s interest in Mr. *A*'s estate will be increased to approximately £5,900. She will, however, have already received items (2), (3) and (4), and she will therefore be entitled only to a balance of £3,845. Before Mrs. *A* can take the matrimonial home she would therefore have to pay the administrators £905. Does para. 5 (2) of Sched. II to the 1952 Act prevent the widow making a payment of money to the administrators after her interest in the estate has been reduced by her accepting assets (2), (3) and (4)? If you agree that the estate can be dealt with in the way mentioned above, do you consider that the assets of the matrimonial home and the leasehold shop can be simple assets without any recitals, especially bearing in mind with regard to the matrimonial home that the widow will be making a payment to the administrators? If so, do you also consider that there should be an instrument of appropriation which should be kept off the title, and would the two assents or the instrument of appropriation be liable for anything more than 10s. stamp duty?

A. First, we do not consider that para. 5 (2) of Sched. II to the Intestates' Estates Act, 1952, prevents the payment mentioned; on the contrary it appears to authorise it. However, we would point out in passing that doubts have been expressed as to whether s. 41 of the Administration of Estates Act, 1925, permits appropriation by a personal representative to satisfy his own interest. By para. 5 (1) of Sched. II to the 1952 Act, the position as to the matrimonial home here is clear, but it is not so clear as to items (2), (3) and (4). We incline, without discussion since no doubt you have considered the point, to the view that such appropriation is permitted, provided an independent valuation is obtained. Second, we consider emphatically that there should be no recitals in either of the assents. Subsequent purchasers will be protected by ss. 36 (7) and 41 (7) of the Administration of Estates Act, 1925. The absence of recitals avoids the risk illustrated by *Re Duce & Boots Contract* [1937] Ch. 642. Thus there is no need for a separate instrument of appropriation. Third, the assent in respect of the lease depends on consent and is thus liable to ad valorem duty under the heading "conveyance or transfer on sale" in Sched. I to the Stamp Act, 1891; *Jopling v. Inland Revenue Commissioners* [1940] 2 K.B. 282. If the widow's interest exceeded the estate, the position would be different. The assent in respect of the matrimonial home does not depend on consent but on the exercise by the widow of her statutory rights, so that there is no sale. Thus, in practice, ad valorem duty is not claimed, except on any cash payment, since to that extent only is the transaction regarded as a sale.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Slander of Teachers

Sir,—In a Current Topic contained in your issue of 5th May under the above heading (p. 390), you suggest that a headmistress called "a thieving liar" suffered a slander actionable *per se* by virtue only of s. 2 of the Defamation Act, 1952, and you refer to *Jones v. Jones* [1916] 2 A.C. 481.

However, the imputation of a criminal offence punishable with imprisonment was actionable *per se* at common law, and here the allegation is at least of larceny.

Further, it is interesting to note that, had the allegation been, like *Jones v. Jones*, that the headmistress in question had committed adultery with a school cleaner, then, unlike *Jones v. Jones*, this would have been actionable *per se* as an imputation of unchastity or adultery to any woman or girl within the Slander of Women Act, 1891.

J. T. FARRAND.

Wembley Park,
Middlesex.

NOTES AND NEWS

THE LAW SOCIETY'S SPECIAL PRIZES

The Law Society's special prizes awarded on the results of all the honours, final, and intermediate examinations held during 1960 have been given to the following candidates:—

- P. R. ALLAN, B.A. (Cantab), the Newcastle-upon-Tyne Prize;
G. de N. CLARK, B.A. (London), the Alfred Syrett Prize;
F. A. J. DUNN, B.A., LL.B. (Cantab), the Sidney Herbert Clay Prize (Sheffield);
J. T. FARRAND, LL.B. (London), (1) the Broderip Prize for Real Property and Conveyancing, (2) the City of London Solicitors' Company's Prize, and (3) the City of London Solicitors' Company's Grotius Prize;
A. FRASER, B.A. (Oxon), the Mellersh Prize;
R. GOLDBERG, LL.B. (Liverpool), (1) the Scott Scholarship, (2) the Clabon Prize, (3) the John Marshall Prize, (4) the Timpon Martin Prize for Liverpool Students, (5) the Atkinson Conveyancing Prize for Liverpool or Preston Students, and (6) the Rupert Bremner Medal for Liverpool Students;
D. E. A. GREENING, the Samuel Herbert Easterbrook Prize;
D. HOGG, LL.B. (Manchester), the Frederic Drinkwater Prize;
L. M. HOWARD, the Justices' Clerks Society's Prize;
D. T. LEWIS, LL.B. (Leeds), the Wakefield and Bradford Prize;
R. LEWIS, LL.B. (Wales), the Associated Law Societies of Wales Prize;
P. LOOSE, B.A. (Oxon), the Cecil Karuth Prize;
I. D. MILLS, the William Hutton Prize;
R. E. NICHOLS (jointly), the Geoffrey Howard-Watson Prize;
A. T. PARKINSON, LL.B. (Manchester), the Stephen Heelis Gold Medal for Manchester and Salford Students;
J. N. PORTER, the Maurice Norden Prize;
M. J. SIMPSON, LL.B. (London), the Local Government Prize;
ANNE NICHOLSON TAYLOR, LL.B. (Manchester), the Render Prize;
A. H. Q. TRELOAR (jointly), the Geoffrey Howard-Watson Prize.

MEDICAL APPEAL TRIBUNALS

Mr. PHILLIP WIEN, Q.C., Mr. ALTER M. HURWITZ and Mr. ORBY H. MOOTHAM have been appointed to the Panel of Chairmen of Medical Appeal Tribunals constituted for the purpose of the National Insurance (Industrial Injuries) Act, 1946. These are part-time appointments.

REPORT OF PATENT OFFICE FOR 1960

The Comptroller-General's Annual Report on the work of the Patent Office in 1960 (H.M. Stationery Office, 1s. 6d. net) refers to the continued increase in applications for patents and trade marks and in applications from other countries. More than half the complete specifications to be examined now come from abroad. Despite the rise in the number of complete specifications to be examined (there were 1,759 more than in 1959), the arrears of unexamined specifications had fallen nearly 400 by the end of the year. This is the first time for eight years that there has been a reduction. The Comptroller refers to public comment about the length of time it takes to obtain a patent. He points out that although the initial delay in the Patent Office is still too long, the office is not responsible for the 3-3½ years after the filing of the complete specification which is often quoted as the time needed to obtain a patent. If the applicant deals promptly with questions raised by the office, an application can be accepted and published within eighteen months; 50 per cent. of the applications are in fact accepted within two years. But one applicant in five takes so long that his application is not accepted in less than three years; in 1960 over 2,000 people paid an extra fee in order to be allowed an extension to 3½ years. Reference is made in the report to international activity in industrial property matters, including preliminary consideration, under the auspices of the Council of Europe, and of the possibility of a single patent application giving monopoly rights in a number of countries.

GRAY'S INN

Thursday, 4th May, being the Grand Day of Easter Term, 1961, the Treasurer, Mr. MICHAEL ROWE, C.B.E., Q.C., and the Masters of the Bench entertained to dinner in Hall the following guests: His Excellency The High Commissioner for Australia (The Right Hon. Sir Eric Harrison, K.C.V.O.), the Deputy Treasurer of the Hon. Society of the Inner Temple (The Right Hon. The Viscount Monckton of Brechley, K.C.M.G., K.C.V.O., M.C., Q.C.), The Lord Bishop of Bedford (The Right Rev. Basil Tudor Guy), The Hon. Mr. Justice Buckley, M.B.E., Sir Ernest Pooley, Bart., G.C.V.O., Sir Malcolm Trustram Eve, Bart., G.B.E., M.C., T.D., Q.C., Sir Henry Hancock, K.C.B., K.B.E., C.M.G., the Attorney-General of the Commonwealth of Australia (Sir Garfield Barwick, Q.C.) and Sir Malcolm Sargent. The Benchers present in addition to the Treasurer were: The Right Hon. the Lord High Chancellor, the Right Hon. Mr. Justice Hilbery, Mr. N. L. C. Macaskie, Q.C., Sir Arthur Comyns Carr, Q.C., the Hon. Mr. Justice McNair, the Right Hon. Lord Justice Sellers, M.C., the Lord Forster of Hareby, K.B.E., Q.C., Mr. Henry Salt, Q.C., His Honour Percy Lamb, Q.C., Sir George Pollock, Q.C., the Hon. Mr. Justice Edmund Davies, the Hon. Mr. Justice Marshall, Mr. G. W. Tooke, Q.C., Mr. Ramsay Willis, Q.C., Mr. David Karmel, Q.C., Mr. H. E. Francis, Q.C., Professor C. J. Hamson, Mr. Kenneth Johnston, Q.C., Mr. Marven Everett, Q.C., Mr. Elwyn Jones, Q.C., M.P., Mr. George Waller, O.B.E., Q.C., The Preacher (the Rev. Canon Sydney Evans, M.A., B.D.) and the Under-Treasurer (Mr. O. Terry).

CHANCERY JUDGES' CHAMBERS

WHITSUN VACATION ROTA

The following masters will be on duty on the dates set out below:—

Date	Master	Summons Clerk
1961		
Tuesday, 23rd May	MASTER FROST (Room 162)	Mr. THORNELEY (Room 164)
Wednesday, 24th May		
Thursday, 25th May		
Friday, 26th May	MASTER HAWKINS (Room 173)	Mr. NIAS (Room 174)
Monday, 29th May		

AFTERMATH OF RE PRENN'S SETTLEMENT

Following the publication last week of the article at p. 415 entitled "False Economy," based on *Re Prenn's Settlement; Truwox Engineering Co., Ltd. v. Board of Trade (C.A.)* [1961] 1 W.L.R. 569; p. 320, *ante*, a reader has written that he has been informed by the Board of Trade that it is at present considering its future policy with regard to certain private companies which are caught by the above decision. Our correspondent acts for a private company in which the principal shareholder executed a settlement which obviously falls within the scope of the *Re Prenn's Settlement* decision, thus debarring the company concerned from claiming exempt private company status.

WHITSUN VACATION JUDGE

The Honourable Mr. Justice PENNYCUICK will act as Vacation Judge from Saturday, 20th May, 1961, to Monday, 29th May, 1961, both days inclusive. His lordship will sit as Queen's Bench Judge in Chambers, in Chancery Court II, on Thursday, 25th May, 1961, at eleven o'clock.

"THE SOLICITORS' JOURNAL"

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PUBLIC NOTICES

LONDON SOLICITORS AND FAMILIES ASSOCIATION

The One Hundred and Forty-fourth ANNUAL GENERAL COURT will be held at 60 Carey Street, London, W.C.2, on Wednesday, 31st May, 1961, at 2.15 p.m., to receive and consider the Report and Statement of Accounts for the year 1960-61 and to elect officers for the ensuing year. All members of the profession will be welcome.

CITY OF SALFORD CONVEYANCING CLERK

Applications are invited for the position of Conveyancing Clerk (unadmitted). Previous municipal experience is not essential. Salary according to experience and qualifications within the scale £960 to £1,140.

The appointment is superannuable and subject to a satisfactory medical examination.

Applications, with the names of two referees, should be delivered to The Town Clerk, Town Hall, Salford, 3, not later than 3rd June, 1961.

FARNBOROUGH URBAN DISTRICT COUNCIL

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the above appointment within the salary range £1,550-£1,670. The commencing salary will be fixed according to qualifications and experience of the successful applicant. Housing accommodation will be made available and removal expenses paid. Five day week in operation. Applications stating age, education, qualifications and experience and giving names and addresses of two referees should reach the undersigned not later than 31st May, 1961.

D. STUART JONES,
Clerk of the Council.

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HARLOW URBAN DISTRICT COUNCIL

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Harlow, with a population of 53,000 rapidly expanding to 80,000 offers wide legal and administrative experience (including committee work) to a keen applicant.

Applications, naming two referees, to be received by the Clerk of the Council, Town Hall, Harlow, not later than first post, 26th May, 1961.

ROTHERHAM RURAL DISTRICT COUNCIL

ASSISTANT SOLICITOR

Applications are invited from solicitors for the above appointment in the department of the Clerk to the Council.

Local government experience not essential, but candidates should have some experience in conveyancing and general legal work. A small amount of advocacy of a minor character is also involved in the appointment.

Salary within the range Grade A.P.T. IV—Lettered Scale "A" (£1,140-£1,565), the commencing point to be dependent upon the experience of the successful candidate.

The appointment is permanent and will be subject to the provisions of the Local Government Superannuation Acts, 1937 and 1953, and determinable by either party upon one month's previous notice in writing.

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The Council will be prepared to consider giving assistance to the successful candidate in regard to housing accommodation if required.

Applications, together with the names and addresses of two persons to whom reference can be made should be received by me not later than Saturday, 3rd June, 1961.

E. F. L. DANBURY,
Clerk to the Council.

Council Offices,
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